

## CHAPTER 178

S.B. No. 886

## AN ACT

relating to exempting certain driver education vehicles from the Certificate of Title Act.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 60, Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 60. The provisions of this Act shall not apply to vehicles owned or operated by the Federal Government or any of its agencies unless such vehicle is sold to a person required under this Act to procure a Certificate of Title, in which event the provisions hereof shall be fully operative as to such vehicle; but shall apply to vehicles owned or acquired by the State of Texas, any County, City, School District, or any other subdivision of State Government; provided however, that the provisions of Section 57 of this Act requiring the payment of fees, shall not apply to vehicles owned or acquired by the State of Texas, any County, City, School District, or any other subdivision of State Government. *This Act does not apply to new vehicles on loan to a School District or any other subdivision of State Government to be used only in driver education courses approved by the Central Education Agency.*

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on April 6, 1989, by the following vote: Yeas 31, Nays 0; passed the House on May 5, 1989, by the following vote: Yeas 134, Nays 1.

Approved May 25, 1989.

Effective May 25, 1989.

## CHAPTER 179

S.B. No. 1045

## AN ACT

relating to the codification, transfer, and renumbering of Title 110B, Revised Statutes, containing statutes relating to public retirement systems.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Title 110B, Revised Statutes, is transferred to the Government Code, designated as Title 8, and renumbered and revised to read as follows:

TITLE 8 [110B]. PUBLIC RETIREMENT SYSTEMS

[SUBTITLE A. GENERAL PROVISIONS

[1. GENERAL PROVISIONS

*[[Chapters 2–10 reserved for expansion]]*

SUBTITLE A [B]. PROVISIONS GENERALLY APPLICABLE TO  
PUBLIC RETIREMENT SYSTEMS

Chapter 801 [11]. STATE PENSION REVIEW BOARD

Chapter 802 [12]. ADMINISTRATIVE REQUIREMENTS

Chapter 803 [13]. PROPORTIONATE RETIREMENT PROGRAM

*[Chapters 804–810 [14–20] reserved for expansion]*

SUBTITLE B [C]. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

Chapter 811 [21]. GENERAL PROVISIONS

Chapter 812 [22]. MEMBERSHIP

Chapter 813 [23]. CREDITABLE SERVICE

Chapter 814 [24]. BENEFITS

Chapter 815 [25]. ADMINISTRATION

*[Chapters 816–820 [26–30] reserved for expansion]*

SUBTITLE C [D]. TEACHER RETIREMENT SYSTEM OF TEXAS

Chapter 821 [31]. GENERAL PROVISIONS

Chapter 822 [32]. MEMBERSHIP

Chapter 823 [33]. CREDITABLE SERVICE

Chapter 824 [34]. BENEFITS

Chapter 825 [35]. ADMINISTRATION

*[Chapters 826–829 reserved for expansion]*

Chapter 830 [36]. OPTIONAL RETIREMENT PROGRAM

*[Chapters 37–40 reserved for expansion]*

SUBTITLE D [E]. JUDICIAL RETIREMENT SYSTEM OF TEXAS PLAN ONE

Chapter 831 [41]. GENERAL PROVISIONS

Chapter 832 [42]. MEMBERSHIP

Chapter 833 [43]. CREDITABLE SERVICE

Chapter 834 [44]. BENEFITS

Chapter 835 [45]. ADMINISTRATION

*[[Chapters 46–50 reserved for expansion]]*

SUBTITLE E [H]. JUDICIAL RETIREMENT SYSTEM OF TEXAS PLAN TWO

Chapter 836 [71]. GENERAL PROVISIONS

Chapter 837 [72]. MEMBERSHIP

Chapter 838 [73]. CREDITABLE SERVICE

Chapter 839 [74]. BENEFITS

Chapter 840 [75]. ADMINISTRATION

SUBTITLE F. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM

Chapter 841 [51]. GENERAL PROVISIONS

Chapter 842 [52]. MEMBERSHIP

Chapter 843 [53]. CREDITABLE SERVICE

Chapter 844 [54]. BENEFITS

Chapter 845 [55]. ADMINISTRATION

[Chapters 846–850 [56–60] reserved for expansion]

#### SUBTITLE G. TEXAS MUNICIPAL RETIREMENT SYSTEM

Chapter 851 [61]. GENERAL PROVISIONS

Chapter 852 [62]. MEMBERSHIP

Chapter 853 [63]. CREDITABLE SERVICE

Chapter 854 [64]. BENEFITS

Chapter 855 [65]. ADMINISTRATION

#### TITLE 8 [110B]. PUBLIC RETIREMENT SYSTEMS

~~[SUBTITLE A. GENERAL PROVISIONS~~

~~[CHAPTER 1. GENERAL PROVISIONS~~

~~[Sec. 1.001. PURPOSE OF TITLE~~

~~[Sec. 1.002. CONSTRUCTION OF TITLE]~~

#### TITLE 8 [110B]. PUBLIC RETIREMENT SYSTEMS

~~[SUBTITLE A. GENERAL PROVISIONS~~

~~[CHAPTER 1. GENERAL PROVISIONS~~

~~[Sec. 1.001. PURPOSE OF TITLE. (a) This title is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change. It is contemplated that this title will be included in the future in a government code.~~

~~[(b) Consistent with the objectives of the statutory revision program, the purpose of this title is to make the general and permanent public retirement system law more accessible and understandable by:~~

~~[(1) rearranging the statutes into a more logical order;~~

~~[(2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;~~

~~[(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and~~

~~[(4) restating the law in modern American English to the greatest extent possible.~~

~~[Sec. 1.002. CONSTRUCTION OF TITLE. The Code Construction Act (Chapter 311, Government Code) applies to the construction of each provision in this title, except as otherwise expressly provided by this title.]~~

SUBTITLE A [B]. PROVISIONS GENERALLY APPLICABLE TO  
PUBLIC RETIREMENT SYSTEMS

CHAPTER 801 [11]. STATE PENSION REVIEW BOARD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 801.001 [11.001]. DEFINITIONS

[Sections 801.002–801.100 [11.002–11.100] reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 801.101 [11.101]. PENSION REVIEW BOARD

Sec. 801.102 [11.102]. COMPOSITION OF BOARD

Sec. 801.103 [11.103]. MEMBERS APPOINTED BY GOVERNOR

Sec. 801.104 [11.104]. MEMBERS APPOINTED BY OTHERS

Sec. 801.105 [11.105]. WHEN QUALIFICATIONS ARE REQUIRED

Sec. 801.106 [11.106]. TERMS OF OFFICE

Sec. 801.107 [11.107]. APPLICATION OF SUNSET ACT

Sec. 801.108 [11.108]. COMPENSATION; EXPENSES

Sec. 801.109 [11.109]. MEETINGS

Sec. 801.110 [11.110]. PRESIDING OFFICERS

Sec. 801.111 [11.111]. EXECUTIVE DIRECTOR; EMPLOYEES

Sec. 801.112 [11.112]. FINANCES AND EQUIPMENT

[Sections 801.113–801.200 [11.113–11.200] reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

Sec. 801.201 [11.201]. RULEMAKING

Sec. 801.202 [11.202]. GENERAL DUTIES

Sec. 801.203 [11.203]. REPORT TO LEGISLATURE AND GOVERNOR

Sec. 801.204 [11.204]. INSPECTION OF RECORDS

Sec. 801.205 [11.205]. SUBPOENA

SUBTITLE A [B]. PROVISIONS GENERALLY APPLICABLE TO  
PUBLIC RETIREMENT SYSTEMS

CHAPTER 801 [11]. STATE PENSION REVIEW BOARD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 801.001 [11.001]. DEFINITIONS. In this chapter:

(1) "Board" means the State Pension Review Board.

(2) "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, or of an agency or instrumentality of the state or a political subdivision, and includes the optional retirement program governed by Chapter 830 [36 of this title], but does not include:

(A) a program, other than the optional retirement program, for which benefits are administered by a life insurance company;



- (B) a program providing only workers' compensation benefits;
- (C) a program administered by the federal government;
- (D) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the [federal] Internal Revenue Code of 1986 (26 U.S.C. Section 409) [1954];
- (E) a plan described by Section 401(d) of the [federal] Internal Revenue Code of 1986 (26 U.S.C. Section 401) [1954];
- (F) an individual account plan consisting of an annuity contract described by Section 403(b) of the [federal] Internal Revenue Code of 1986 (26 U.S.C. Section 403) [1954]; or
- (G) an eligible state deferred compensation plan described by Section 457(b) of the [federal] Internal Revenue Code of 1986 (26 U.S.C. Section 457) [1954].

[Sections 801.002–801.100 [~~11.002–11.100~~] reserved for expansion]

#### SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 801.101 [~~11.101~~]. PENSION REVIEW BOARD. The State Pension Review Board is an agency of the state.

Sec. 801.102 [~~11.102~~]. COMPOSITION OF BOARD. The board is composed of nine members.

Sec. 801.103 [~~11.103~~]. MEMBERS APPOINTED BY GOVERNOR. (a) The governor shall appoint, with the advice and consent of the senate, seven members to the board.

(b) The governor shall appoint to the board:

(1) three persons who have experience in the fields of securities investment, pension administration, or pension law but who are not members or retirees of a public retirement system;

(2) one person who has experience in the field of actuarial science;

(3) one person who has experience in the field of governmental finance;

(4) one person who is a contributing member of a public retirement system; and

(5) one person who is receiving retirement benefits from a public retirement system.

Sec. 801.104 [~~11.104~~]. MEMBERS APPOINTED BY OTHERS. (a) The lieutenant governor shall appoint to the board one member of the senate.

(b) The speaker of the house of representatives shall appoint to the board one member of the house.

Sec. 801.105 [~~11.105~~]. WHEN QUALIFICATIONS ARE REQUIRED. The qualifications provided by this subchapter for members of the board are required only at the time of appointment to the board.

Sec. 801.106 [~~11.106~~]. TERMS OF OFFICE. Members of the board hold office for staggered terms of six years, with the terms of three members expiring on January 31 of each odd-numbered year.

Sec. 801.107 [~~11.107~~]. APPLICATION OF SUNSET ACT. The board is subject to the Texas Sunset Act (Chapter 325[~~, Government Code~~]). Unless the board is continued in existence as provided by that Act, the board is abolished and this chapter expires September 1, 1991.

Sec. 801.108 [~~11.108~~]. COMPENSATION; EXPENSES. A member of the board is entitled to reimbursement by the state for actual and necessary expenses incurred in performing the functions of the board. A member of the board who also is a member of the legislature is ineligible to receive compensation for service performed as a board member.

Sec. 801.109 [~~11.109~~]. MEETINGS. The board shall meet at least three times each year and may meet at other times at the call of the presiding officer or as provided by board rule.

Sec. 801.110 ~~[11.110]~~. PRESIDING OFFICERS. The board shall select its presiding officers.

Sec. 801.111 ~~[11.111]~~. EXECUTIVE DIRECTOR; EMPLOYEES. (a) The board shall employ an executive director to be the executive head of the board and perform its administrative duties.

(b) The executive director may employ staff members necessary for administering the functions of the board.

Sec. 801.112 ~~[11.112]~~. FINANCES AND EQUIPMENT. (a) The executive director may set staff salaries, within the limits of appropriated funds and subject to the approval of the board.

(b) The board may request and use staff assistance, equipment, and office space from the Employees Retirement System of Texas.

(c) The legislature may appropriate funds from the general revenue fund to the board for the payment of staff salaries and operating expenses of the board.

[Sections 801.113–801.200 ~~[11.113–11.200]~~ reserved for expansion]

#### SUBCHAPTER C. POWERS AND DUTIES OF BOARD

Sec. 801.201 ~~[11.201]~~. RULEMAKING. (a) The board shall adopt rules for the conduct of its business.

(b) For the purpose of performing its duties under ~~[Subdivision (1) or (2) of] Section 801.202(1) or (2) [11.202 of this chapter]~~, the board by rule may require clarification of information provided by a public retirement system in a report that is required by law and is required to be filed with the board. A rule adopted under this subsection may not be enforced against a public retirement system if compliance with the rule would cause the system to incur a major expense.

Sec. 801.202 ~~[11.202]~~. GENERAL DUTIES. The board shall:

(1) conduct a continuing review of public retirement systems, compiling and comparing information about benefits, creditable service, financing, and administration of systems;

(2) conduct intensive studies of potential or existing problems that threaten the actuarial soundness of or inhibit an equitable distribution of benefits in one or more public retirement systems;

(3) provide information and technical assistance on pension planning to public retirement systems on request; and

(4) recommend policies, practices, and legislation to public retirement systems and appropriate governmental entities.

Sec. 801.203 ~~[11.203]~~. REPORT TO LEGISLATURE AND GOVERNOR. The board shall present to the legislature and the governor, in November of each even-numbered year, a public report explaining the work and findings of the board during the preceding two-year period and including drafts or recommendations of any legislation relating to public retirement systems that the board finds advisable.

Sec. 801.204 ~~[11.204]~~. INSPECTION OF RECORDS. In performing its functions, the board may inspect the books, records, or accounts of a public retirement system during business hours of the system.

Sec. 801.205 ~~[11.205]~~. SUBPOENA. (a) The board, if reasonably necessary in the course of performing a board function, may subpoena witnesses or books, records, or other documents. The presiding officer of the board shall issue, in the name of the board, only such subpoenas as a majority of the board may direct.

(b) A peace officer shall serve a subpoena issued by the board. If the person to whom a subpoena is directed fails to comply, the board may bring suit to enforce the subpoena in a district court of the county in which the witness resides or in the county in which the books, records, or other documents are located. If the district court determines that good

cause exists for issuance of the subpoena, the court shall order compliance. The district court may modify the requirements of a subpoena that the court determines are unreasonable. Failure to obey the order of the district court is punishable as contempt.

(c) The attorney general shall represent the board in a suit to enforce a subpoena.

#### CHAPTER 802 [12]. ADMINISTRATIVE REQUIREMENTS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 802.001 [12.001]. DEFINITIONS

Sec. 802.002 [12.002]. EXEMPTIONS

Sec. 802.003 [12.003]. WRIT OF MANDAMUS

[Sections 802.004–802.100 [12.004–12.100] reserved for expansion]

##### SUBCHAPTER B. STUDIES AND REPORTS

Sec. 802.101 [12.101]. ACTUARIAL VALUATION

Sec. 802.102 [12.102]. AUDIT

Sec. 802.103 [12.103]. ANNUAL FINANCIAL REPORT

Sec. 802.104 [12.104]. REPORT OF MEMBERS AND RETIREES

Sec. 802.105 [12.105]. REGISTRATION

Sec. 802.106 [12.106]. INFORMATION TO MEMBER OR ANNUITANT

Sec. 802.107 [12.1061]. GENERAL PROVISIONS RELATING TO REPORTS

[Sections 802.108–802.200 [12.107–12.200] reserved for expansion]

##### SUBCHAPTER C. ADMINISTRATION OF ASSETS

Sec. 802.201 [12.201]. ASSETS IN TRUST

Sec. 802.202 [12.202]. INVESTMENT OF SURPLUS

Sec. 802.203 [12.203]. FIDUCIARY RESPONSIBILITY

Sec. 802.204 [12.204]. INVESTMENT MANAGER

Sec. 802.205 [12.205]. INVESTMENT CUSTODY ACCOUNT

Sec. 802.206 [12.206]. EVALUATION OF INVESTMENT SERVICES

Sec. 802.207 [12.207]. CUSTODY AND USE OF FUNDS

[Sections 802.208–802.300 [12.208–12.300] reserved for expansion]

##### SUBCHAPTER D. ACTUARIAL ANALYSIS OF LEGISLATION

Sec. 802.301 [12.301]. WHEN ACTUARIAL ANALYSIS REQUIRED

Sec. 802.302 [12.302]. ACTION BY STATE PENSION REVIEW BOARD

Sec. 802.303 [12.303]. CONTENTS OF ACTUARIAL ANALYSIS

Sec. 802.304 [12.304]. COST OF ACTUARIAL ANALYSIS

#### CHAPTER 802 [12]. ADMINISTRATIVE REQUIREMENTS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 802.001 [12.001]. DEFINITIONS. In this chapter:

(1) "Governing body of a public retirement system" means the board of trustees, pension board, or other public retirement system governing body that has the fiduciary

responsibility for assets of the system and has the duties of overseeing the investment and expenditure of funds of the system and the administration of benefits of the system.

(2) "Public retirement system" means a continuing, organized program of service retirement, disability retirement, or death benefits for officers or employees of the state or a political subdivision, or of an agency or instrumentality of the state or a political subdivision, other than:

- (A) a program providing only workers' compensation benefits;
- (B) a program administered by the federal government;
- (C) an individual retirement account or individual retirement annuity within the meaning of Section 408, or a retirement bond within the meaning of Section 409, of the ~~[federal]~~ Internal Revenue Code of 1986 (26 U.S.C. Sections 408, 409) [1954];
- (D) a plan described by Section 401(d) of the ~~[federal]~~ Internal Revenue Code of 1986 (26 U.S.C. Section 401) [1954];
- (E) an individual account plan consisting of an annuity contract described by Section 408(b) of the ~~[federal]~~ Internal Revenue Code of 1986 (26 U.S.C. Section 408) [1954];
- (F) an eligible state deferred compensation plan described by Section 457(b) of the ~~[federal]~~ Internal Revenue Code of 1986 (26 U.S.C. Section 457) [1954]; or
- (G)(i) in Sections 802.104 [12.104] and 802.105 [12.105] of this chapter, a program for which benefits are administered by a life insurance company; and
- (ii) in the rest of this chapter, a program for which the only funding agency is a life insurance company.

Sec. 802.002 [12.002]. EXEMPTIONS. (a) Except as provided by Subsection (b) ~~[of this section]~~, the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas County and District Retirement System, the Texas Municipal Retirement System, and the Judicial Retirement System of Texas Plan Two are exempt from Sections 802.101(a), 802.101(b), 802.101(d), 802.102, 802.103(a), 802.103(b), 802.202, 802.203, 802.204, 802.205, 802.206, and 802.207 [12.101(a), 12.101(b), 12.101(d), 12.102, 12.103(a), 12.103(b), 12.202, 12.203, 12.204, 12.205, 12.206, and 12.207 of this chapter]. The Judicial Retirement System of Texas Plan One is exempt from all of Subchapters B and C ~~[of this chapter]~~ except Sections 802.104 [12.104] and 802.105 [12.105]. The optional retirement program governed by Chapter 830 ~~[36 of this title]~~ is exempt from all of Subchapters B and C ~~[of this chapter]~~ except Section 802.106 [12.106].

(b) If an exempt retirement system or program is required by law to make an actuarial valuation of the assets of the system or program and publish actuarial information about the system or program, the actuary making the valuation and the governing body publishing the information must include the information required by Section 802.101(b) ~~[12.101(b) of this subtitle]~~.

Sec. 802.003 [12.003]. WRIT OF MANDAMUS. (a) Except as provided by Subsection (b) ~~[of this section]~~, if the governing body of a public retirement system fails or refuses to comply with a requirement of this chapter that applies to it, a person residing in the political subdivision in which the members of the governing body are officers may file a motion, petition, or other appropriate pleading in a district court having jurisdiction in a county in which the political subdivision is located in whole or in part, for a writ of mandamus to compel the governing body to comply with the applicable requirement.

(b) If the governing body of the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Texas Municipal Retirement System, or the Texas County and District Retirement System fails or refuses to comply with a requirement of this chapter that applies to it, any resident of the state may file a pleading in a district court in Travis County to compel the governing body to comply with the applicable requirement.

(c) If the prevailing party in an action under this section is other than the governing body of a public retirement system, the court may award reasonable attorney's fees and costs of suit.

(d) The State Pension Review Board may file an appropriate pleading, in the manner provided by this section for filing by an individual, for the purpose of enforcing a requirement of Subchapter B or C ~~[of this chapter]~~, other than a requirement of Section ~~802.101(a), 802.101(d), 802.102, 802.103(a), or 802.104~~ ~~[12.101(a), 12.101(d), 12.102, 12.103(a), or 12.104]~~.

[Sections 802.004–802.100 ~~[12.004–12.100]~~ reserved for expansion]

#### SUBCHAPTER B. STUDIES AND REPORTS

Sec. 802.101 ~~[12.101]~~. ACTUARIAL VALUATION. (a) The governing body of a public retirement system shall employ an actuary, as a full-time or part-time employee or as a consultant, to make a valuation at least once every three years of the assets and liabilities of the system on the basis of assumptions and methods that are reasonable in the aggregate, considering the experience of the program and reasonable expectations, and that, in combination, offer the actuary's best estimate of anticipated experience under the program.

(b) On the basis of the valuation, the actuary shall make recommendations to the governing body of the public retirement system to ensure the actuarial soundness of the system. The actuary shall define each actuarial term and enumerate and explain each actuarial assumption used in making the valuation. This information must be included either in the actuarial study or in a separate report made available as a public record.

(c) The governing body of a public retirement system shall file with the State Pension Review Board a copy of each actuarial study and each separate report made as required by law.

(d) An actuary employed under this section must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the ~~[federal]~~ Employee Retirement Income Security Act of 1974 (*29 U.S.C. Section 1001 et seq.*).

Sec. 802.102 ~~[12.102]~~. AUDIT. The governing body of a public retirement system shall have the accounts of the system audited at least annually by a certified public accountant in accordance with generally accepted auditing standards.

Sec. 802.103 ~~[12.103]~~. ANNUAL FINANCIAL REPORT. (a) Except as provided by Subsection (c) ~~[of this section]~~, the governing body of a public retirement system shall publish an annual financial report showing the financial condition of the system as of the last day of the fiscal year covered in the report. The report must include the financial statements and schedules examined in the most recent audit performed as required by Section 802.102 ~~[12.102 of this subtitle]~~ and must include a statement of opinion by the certified public accountant as to whether or not the financial statements and schedules are presented fairly and in accordance with generally accepted accounting principles.

(b) The governing body of a public retirement system shall, before the 211th day after the last day of the fiscal year under which the system operates, file with the State Pension Review Board a copy of each annual financial report it makes as required by law.

(c) A public retirement system that is subject to Chapter 125, Acts of the 45th Legislature, Regular Session, 1937 (Article 6243e, Vernon's Texas Civil Statutes), and that has total assets with a book value, as of the last day of the fiscal year, of less than \$50,000, may submit to the State Pension Review Board for that year, instead of the financial report otherwise required by this section to be published and submitted, a copy of the financial report it submits to the firemen's pension commissioner.

Sec. 802.104 ~~[12.104]~~. REPORT OF MEMBERS AND RETIREES. Each public retirement system annually shall, before the 210th day after the last day of the fiscal year under which the system operates, submit to the State Pension Review Board a report containing the number of members and number of retirees of the system as of the last day of the immediately preceding fiscal year.

Sec. 802.105 [12-105]. REGISTRATION. (a) Each public retirement system shall, before the 91st day after the date of its creation, register with the State Pension Review Board.

(b) A registration form submitted to the board must include:

- (1) the name, mailing address, and telephone number of the public retirement system;
- (2) the names and occupations of the chairman and other members of its governing body;
- (3) a citation of the law under which the system was created;
- (4) the beginning and ending dates of its fiscal year; and
- (5) the name of the administrator of the system and the person's business mailing address and telephone number if different from those of the retirement system.

(c) A public retirement system shall notify the board of changes in information required under Subsection (b) ~~[of this section]~~ before the 31st day after the day the change occurs.

Sec. 802.106 [12-106]. INFORMATION TO MEMBER OR ANNUITANT. (a) When a person becomes a member of a public retirement system, the system shall provide the person:

- (1) a summary of the benefits from the retirement system available to or on behalf of a person who retires or dies while a member or retiree of the system;
- (2) a summary of procedures for claiming or choosing the benefits available from the retirement system; and
- (3) a summary of the provisions for employer and employee contributions, withdrawal of contributions, and eligibility for benefits, including any right to terminate employment and retain eligibility.

(b) A public retirement system shall distribute to each active member and retiree a summary of any significant change that is made in statutes or ordinances governing the retirement system and that affects contributions, benefits, or eligibility. A distribution must be made before the 271st day after the day the change is adopted.

(c) A public retirement system annually shall provide to each active member a statement of the amounts of the member's accumulated contributions and total accumulated service credit on which benefits may be based and to each annuitant a statement of the amount of payments made to the annuitant by the system during the preceding 12 months.

(d) A public retirement system shall provide to each active member and annuitant a summary of the financial condition of the retirement system, if the actuary of the system determines, based on a computation of advanced funding of actuarial costs, that the financing arrangement of the system is inadequate. The actuarial determination must be disclosed to members and annuitants at the time annual statements are next provided under Subsection (c) ~~[of this section]~~ after the determination is made. An actuary who makes a determination under this subsection must have at least five years of experience working with one or more public retirement systems and be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the ~~[federal]~~ Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(e) A member not currently contributing to a particular public retirement system is entitled on written request to receive from that system a copy of any document required by this section to be furnished to a member who is actively contributing.

(f) The governing body of a public retirement system composed of participating subdivisions or municipalities may provide one copy of any document it prepares under this section to each affected participating subdivision or municipality. Each participating subdivision or municipality shall distribute the information contained in the document to its employee members and annuitants, as applicable.

(g) Information required by this section may be contained, at the discretion of the public retirement system providing the information, in one or more separate documents.

The information must be stated to the greatest extent practicable in terms understandable to a typical member of the public retirement system.

(h) A public retirement system shall submit to the State Pension Review Board copies of the summarized information required by Subsections (a) and (b) ~~[of this section]~~. A system shall submit a copy of the information required by Subsection (a) before the 31st day after the date of publication and a copy of the information required by Subsection (b) before the 271st day after the date a change is adopted. ~~[Until September 1, 1988, the State Pension Review Board may exempt a public retirement system from the requirement that it provide each member a statement of total accumulated service credit if the requirement will create an administrative hardship for the system.]~~

Sec. 802.107 ~~[12.1061]~~. GENERAL PROVISIONS RELATING TO REPORTS. (a) A public retirement system shall maintain for public review at its main office and at such other locations as the retirement system considers appropriate copies of the most recent edition of each type of report or other information required by this chapter to be submitted to the State Pension Review Board.

(b) Information required by this chapter to be submitted to the State Pension Review Board may be contained in one or more documents but must be submitted within the period provided by the provision requiring the information.

[Sections 802.108–802.200 ~~[12.107–12.200]~~ reserved for expansion]

#### SUBCHAPTER C. ADMINISTRATION OF ASSETS

Sec. 802.201 ~~[12.201]~~. ASSETS IN TRUST. The governing body of a public retirement system shall hold or cause to be held in trust the assets appropriated or dedicated to the system, for the benefit of the members and retirees of the system and their beneficiaries.

Sec. 802.202 ~~[12.202]~~. INVESTMENT OF SURPLUS. (a) The governing body of a public retirement system is responsible for the management and administration of the funds of the system.

(b) When, in the opinion of the governing body, a surplus of funds exists in accounts of a public retirement system over the amount needed to make payments as they become due within the next year, the governing body shall deposit all or as much of the surplus as the governing body considers prudent in a reserve fund for investment.

(c) The governing body shall determine the procedure it finds most efficient and beneficial for the management of the reserve fund of the system. The governing body may directly manage the investments of the system or may choose and contract for professional investment management services.

Sec. 802.203 ~~[12.203]~~. FIDUCIARY RESPONSIBILITY. (a) In making and supervising investments of the reserve fund of a public retirement system, an investment manager or the governing body shall discharge its duties solely in the interest of the participants and beneficiaries:

(1) for the exclusive purposes of:

- (A) providing benefits to participants and their beneficiaries; and
- (B) defraying reasonable expenses of administering the system;
- (2) with the care, skill, prudence, and diligence under the prevailing circumstances that a prudent person acting in a like capacity and familiar with matters of the type would use in the conduct of an enterprise with a like character and like aims;
- (3) by diversifying the investments of the system to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
- (4) in accordance with the documents and instruments governing the system to the extent that the documents and instruments are consistent with this subchapter.

(b) In choosing and contracting for professional investment management services and in continuing the use of an investment manager, the governing body must act prudently and in the interest of the participants and beneficiaries of the public retirement system.

(c) A trustee is not liable for the acts or omissions of an investment manager appointed under Section ~~802.204~~ ~~[12.204 of this subtitle]~~, nor is a trustee obligated to invest or otherwise manage any asset of the system subject to management by the investment manager.

(d) An investment manager appointed under Section ~~802.204~~ ~~[12.204 of this subtitle]~~ shall acknowledge in writing the manager's fiduciary responsibilities to the fund the manager is appointed to serve.

(e) The investment standards provided by Subsection (a) ~~[of this section]~~ and the policies, requirements, and restrictions adopted under Section ~~802.204(c)~~ ~~[12.204(c) of this subtitle]~~ are the only standards, policies, or requirements for, or restrictions on, the investment of funds of a public retirement system by an investment manager or by a governing body during a 90-day interim between professional investment management services. Any other standard, policy, requirement, or restriction provided by law is suspended and not applicable during a time, and for 90 days after a time, in which an investment manager is responsible for investment of a reserve fund. If an investment manager has not begun managing investments of a reserve fund before the 91st day after the date of termination of the services of a previous investment manager, the standards, policies, requirements, and restrictions otherwise provided by law are applicable until the date professional investment management services are resumed.

Sec. ~~802.204~~ ~~[12.204]~~. INVESTMENT MANAGER. (a) The governing body of a public retirement system may appoint investment managers for the system by contracting for professional investment management services with one or more organizations, which may include a bank if it has a trust department, that are in the business of managing investments.

(b) To be eligible for appointment under this section, an investment manager must be:

(1) registered under the ~~[federal]~~ Investment Advisors Act of 1940 (*15 U.S.C. Section 80b-1 et seq.*);

(2) a bank as defined by that Act; or

(3) an insurance company qualified to perform investment services under the laws of more than one state.

(c) In a contract made under this section, the governing body shall specify any policies, requirements, or restrictions, including criteria for determining the quality of investments and for the use of standard rating services, that the governing body adopts for investments of the system.

(d) A political subdivision of which members of the public retirement system are officers or employees may pay all or part of the cost of professional investment management services under a contract under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

Sec. ~~802.205~~ ~~[12.205]~~. INVESTMENT CUSTODY ACCOUNT. (a) If the governing body of a public retirement system contracts for professional investment management services, it also shall enter into an investment custody account agreement designating a state or national bank as custodian for all assets allocated to or generated under the contract.

(b) Under a custody account agreement, the governing body of a public retirement system shall require the designated bank to perform the duties and assume the responsibilities for funds under the contract for which the agreement is established that are performed and assumed, in the absence of a contract, by the custodian of system funds.

(c) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of bank services under a custody account agreement under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

Sec. ~~802.206~~ ~~[12.206]~~. EVALUATION OF INVESTMENT SERVICES. (a) The governing body of a public retirement system may at any time and shall at frequent intervals monitor the investments made by any investment manager for the system. The governing body may contract for professional evaluation services to fulfill this requirement.



(b) A political subdivision of which members of the retirement system are officers or employees may pay all or part of the cost of professional evaluation services under a contract under this section. Any cost not paid directly by a political subdivision is payable from funds of the public retirement system.

Sec. ~~802.207~~ [12.207]. CUSTODY AND USE OF FUNDS. (a) An investment manager other than a bank having a contract with a public retirement system under Section ~~802.204~~ [12.204 of this subtitle] may not be a custodian of any assets of the reserve fund of the system.

(b) When demands of the public retirement system require, the governing body shall withdraw from a custodian of system funds money for use in paying benefits to members and other beneficiaries of the system and for other uses authorized by this subchapter and approved by the governing body.

[Sections ~~802.208–802.300~~ [12.208–12.300] reserved for expansion]

#### SUBCHAPTER D. ACTUARIAL ANALYSIS OF LEGISLATION

Sec. ~~802.301~~ [12.301]. WHEN ACTUARIAL ANALYSIS REQUIRED. (a) Except as provided by Subsection (f) [of this section], a bill or resolution that proposes to change the amount or number of benefits or participation in benefits of a public retirement system or that proposes to change a fund liability of a public retirement system is required to have attached to it an actuarial analysis as provided by this subchapter.

(b) An actuarial analysis required by this section must be prepared by an actuary who is a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the [federal] Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(c) A required actuarial analysis must be attached to the bill or resolution:

(1) at the time it is filed for introduction in either house of the legislature and before a committee hearing on the bill or resolution is held; and

(2) at the time it is reported from a legislative committee of either house for consideration by the full membership of a house of the legislature.

(d) An actuarial analysis must remain with the bill or resolution to which it is attached throughout the legislative process, including the process of submission to the governor.

(e) A bill or resolution for which an actuarial analysis is required is exempt from the requirement of a fiscal note as provided by Chapter 314 [Chapter 284, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5429c-1, Vernon's Texas Civil Statutes)].

(f) An actuarial analysis is not required for a bill or resolution that proposes to have an economic effect on a public retirement system only by providing new or increased administrative duties.

Sec. ~~802.302~~ [12.302]. ACTION BY STATE PENSION REVIEW BOARD. (a) When a bill or resolution for which an actuarial analysis is required is filed for introduction in either house of the legislature, the office in which the proposed legislation is filed shall send a copy of the bill or resolution, accompanied by an actuarial analysis as required by Section ~~802.301(c)(1)~~ [12.301(c)(1) of this subtitle], to the State Pension Review Board.

(b) The State Pension Review Board may have a second actuary either review the actuarial analysis accompanying the bill or resolution or prepare a separate actuarial analysis.

(c) An actuary who reviews or prepares an analysis for the State Pension Review Board must have at least five years of experience as an actuary working with one or more public retirement systems and must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the [federal] Employees Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

Sec. ~~802.303~~ [12.303]. CONTENTS OF ACTUARIAL ANALYSIS. (a) An actuarial analysis must show the economic effect of the bill or resolution on the public retirement system affected, including a projection of the annual cost to the system of implementing

the legislation for at least 10 years. If the bill or resolution applies to more than one public retirement system, the cost estimates in the analysis may be limited to each affected state-financed public retirement system and each affected public retirement system in a city having a population of 200,000 or more.

(b) An actuarial analysis must include a statement of the actuarial assumptions and methods of computation used in the analysis and a statement of whether or not the bill or resolution, if enacted, will make the affected public retirement system actuarially unsound or, in the case of a system already actuarially unsound, more unsound.

(c) The projection of the effect of the bill or resolution on the actuarial soundness of the system must be based on a computation of advanced funding of actuarial costs.

Sec. ~~802.304~~ [12.304]. COST OF ACTUARIAL ANALYSIS. The state may not pay the cost of a required actuarial analysis that is prepared for a public retirement system not financed by the state, except that a sponsor of the bill or resolution for which the analysis is prepared may pay the cost of preparation out of funds available for the sponsor's personal or office expenses.

#### CHAPTER ~~803~~ [13]. PROPORTIONATE RETIREMENT PROGRAM

##### SUBCHAPTER A. GENERAL PROVISIONS

###### Sec. ~~803.001~~ [13.001]. DEFINITIONS

###### Sec. ~~803.002~~ [13.002]. PURPOSE OF CHAPTER

###### Sec. ~~803.003~~ [13.003]. CONSTRUCTION OF CHAPTER

[Sections ~~803.004–803.100~~ [13.004–13.100] reserved for expansion]

##### SUBCHAPTER B. PARTICIPATION AND MEMBERSHIP

###### Sec. ~~803.101~~ [13.101]. PARTICIPATION BY RETIREMENT SYSTEMS

###### Sec. ~~803.102~~ [13.102]. RETIREMENT SYSTEM MEMBERSHIP

[Sections ~~803.103–803.200~~ [13.103–13.200] reserved for expansion]

##### SUBCHAPTER C. CREDITABLE SERVICE

###### Sec. ~~803.201~~ [13.201]. RETIREMENT ELIGIBILITY BASED ON COMBINED SERVICE CREDIT

###### Sec. ~~803.202~~ [13.202]. SERVICE IN CERTAIN RETIREMENT SYSTEMS

[Sections ~~803.203–803.300~~ [13.203–13.300] reserved for expansion]

##### SUBCHAPTER D. BENEFITS

###### Sec. ~~803.301~~ [13.301]. COMPUTATION OF BENEFITS GENERALLY

###### Sec. ~~803.302~~ [13.302]. COMPUTATION OF CERTAIN BENEFITS

[Sections ~~803.303–803.400~~ [13.303–13.400] reserved for expansion]

##### SUBCHAPTER E. ADMINISTRATION

###### Sec. ~~803.401~~ [13.401]. ADMINISTRATION OF PROGRAM

###### Sec. ~~803.402~~ [13.402]. RECORDS

###### Sec. ~~803.403~~ [13.403]. EMPLOYEES RETIREMENT SYSTEM REPORT

#### CHAPTER ~~803~~ [13]. PROPORTIONATE RETIREMENT PROGRAM

##### SUBCHAPTER A. GENERAL PROVISIONS

###### Sec. ~~803.001~~ [13.001]. DEFINITIONS. In this chapter:

(1) "Combined service credit" means the total of a person's service credit in only those statewide retirement systems for which the total satisfies the length-of-service requirements for service retirement at the person's attained age, and does not include:

(A) any service credit in a retirement system for which the total of a person's service credit does not satisfy the length-of-service requirements for service retirement at the person's attained age; or

(B) service credit earned with or allowed by a subdivision or municipality not participating in the program provided by this chapter.

(2) "Service credit" means service that is in a person's account in a statewide retirement system and that may be used to meet length-of-service requirements for service retirement in that system.

(3) "Statewide retirement system" means the Employees Retirement System of Texas, the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plan One, the Judicial Retirement System of Texas Plan Two, the Texas County and District Retirement System, or the Texas Municipal Retirement System.

Sec. 803.002 [13.002]. PURPOSE OF CHAPTER. The purpose of this chapter is to implement the authority granted the legislature by Article XVI, Section 67, of the Texas Constitution to provide a program of proportionate benefits to qualified members of more than one statewide retirement system. It is contrary to the purpose of this chapter for a person or class of persons to receive, because of service in more than one statewide retirement system, proportionately greater benefits from a particular system than a person who has rendered faithful career service under that one system.

Sec. 803.003 [13.003]. CONSTRUCTION OF CHAPTER. The provisions of this chapter are exceptions to the other laws governing statewide retirement systems and prevail over those laws to the extent of explicit conflict, but this chapter must be construed strictly as against those laws.

[Sections 803.004–803.100 [13.004–13.100] reserved for expansion]

#### SUBCHAPTER B. PARTICIPATION AND MEMBERSHIP

Sec. 803.101 [13.101]. PARTICIPATION BY RETIREMENT SYSTEMS. (a) Except as provided by Subsection (b) [~~of this section~~], each statewide retirement system is required to participate in the program of proportionate retirement benefits provided by this chapter.

(b) A subdivision participating in the Texas County and District Retirement System or a municipality participating in the Texas Municipal Retirement System is not required to participate in the proportionate retirement program if the subdivision or municipality elected not to participate under the authority of former law and has not revoked the election under Subsection (c) [~~of this section~~].

(c) A subdivision or municipality that elected not to participate in the proportionate retirement program may revoke the election and elect to participate. An election to participate may be made by vote of the governing body of the subdivision or municipality in the manner required for official actions of the governing body. The governing body shall send notice of an election to participate to the board of trustees of the retirement system in which the subdivision or municipality participates.

(d) The effective date of participation in the proportionate retirement program by a subdivision or municipality electing to participate under Subsection (c) [~~of this section~~] is the first day of the month after the month in which the appropriate board of trustees receives notice of an election.

(e) Participation in the proportionate retirement program includes all persons who are members of a statewide retirement system and, in the case of members of the Texas County and District Retirement System or the Texas Municipal Retirement System, who are also employees or former employees of a subdivision or municipality participating in the proportionate retirement program.

Sec. 803.102 [13.102]. RETIREMENT SYSTEM MEMBERSHIP. (a) Membership in a statewide retirement system does not terminate because of absence from service covered by that system during a period for which the member earns service credit in another statewide retirement system for service performed for an employer other than a subdivision or municipality not participating in the program provided by this chapter.

(b) A person may continue membership in a statewide retirement system while absent from service with all statewide retirement systems if the person would be eligible, under the laws governing that system, to continue membership if the person's combined service credit had been earned in that system.

(c) In this section, a person's absence from service begins on the day after the last day of service covered by any statewide retirement system.

[Sections 803.103–803.200 [13.103–13.200] reserved for expansion]

#### SUBCHAPTER C. CREDITABLE SERVICE

Sec. 803.201 [13.201]. RETIREMENT ELIGIBILITY BASED ON COMBINED SERVICE CREDIT. (a) A person who has membership in two or more statewide retirement systems is subject to the laws governing each of those systems for determination of the person's eligibility for service retirement benefits from each system, except that, for the purpose of determining whether a person meets the length-of-service requirements for service retirement of a system, the person's combined service credit must be considered as if it were all credited in each system.

(b) A person's combined service credit is useable only in determining eligibility for service retirement benefits and may not be used in determining:

(1) eligibility for disability retirement benefits, death benefits, or any type of benefit other than service retirement benefits; nor

(2) the amount of any type of benefit.

(c) A person receiving service retirement or lifetime disability retirement benefits from one or more statewide retirement systems may use the program provided by this chapter to qualify for subsequent service retirement under another statewide retirement system in which the person has service credit, if the person was not eligible to retire under the latter system at the time of previous service retirement, or qualification for lifetime disability retirement benefits[,] from a statewide retirement system, or if the person's previous retirement was not based on combined service credit.

(d) Service credit earned with or allowed by more than one statewide retirement system for the same period of time may be counted only once in determining the amount of a person's combined service credit.

Sec. 803.202 [13.202]. SERVICE IN CERTAIN RETIREMENT SYSTEMS. The board of trustees of the Employees Retirement System of Texas by rule may:

(1) consider the classes of service in the Employees Retirement System of Texas as if they were, for purposes of this chapter, classes in separate statewide retirement systems; or

(2) permit a person who is retiring exclusively from retirement systems administered by the board to use the shortest length-of-service requirement provided for retirement in any class in which the person has service credit.

[Sections 803.203–803.300 [13.203–13.300] reserved for expansion]

#### SUBCHAPTER D. BENEFITS

Sec. 803.301 [13.301]. COMPUTATION OF BENEFITS GENERALLY. The amount of a benefit payable by a statewide retirement system is determined according to and in the manner prescribed by laws governing that system and is based solely on a person's service credit in that system.

Sec. ~~803.302~~ [13.302]. COMPUTATION OF CERTAIN BENEFITS. (a) If payable to or on behalf of a person who has used combined service credit to qualify for benefits from at least one statewide retirement system, each of the following types of benefits must be computed as provided by Subsection (b) ~~[of this section]~~:

- (1) a base retirement annuity that does not vary in amount directly with the amount of a person's service credit;
- (2) a fixed lump-sum death benefit payable on the death of a retiree;
- (3) any death benefit payable on the death of a retiree who received service retirement benefits; and
- (4) a survivor benefit payable to a beneficiary of a deceased retiree of the Teacher Retirement System of Texas.

(b) The amount of a benefit payable under Subsection (a) ~~[of this section]~~ by a statewide retirement system is a percentage, but not more than 100 percent, of the benefit that would be or would have been payable if the person retired or had retired on the basis of only the service that is credited in that system. The percentage applied is equal to the amount of service credit in that system, divided by the amount of service credit that would be or would have been required for the benefit if the person retired or had retired on the basis of only the service that is credited in that system.

[Sections ~~803.303–803.400~~ [13.303–13.400] reserved for expansion]

#### SUBCHAPTER E. ADMINISTRATION

Sec. ~~803.401~~ [13.401]. ADMINISTRATION OF PROGRAM. (a) The board of trustees of each statewide retirement system may adopt rules it finds necessary to implement the proportionate retirement program provided by this chapter.

(b) Each statewide retirement system, under this chapter and other laws governing the particular system, is responsible for determining:

- (1) the eligibility of its members for benefits, including whether sufficient combined service credit exists to qualify members for proportionate retirement benefits from that system; and
- (2) the amount and duration of proportionate retirement benefits payable by that system.

(c) Each statewide retirement system shall cooperate with the other statewide retirement systems in the implementation of the proportionate retirement program.

Sec. ~~803.402~~ [13.402]. RECORDS. Records of members and beneficiaries of a statewide retirement system that are in the custody of the system are considered to be personnel records and confidential information under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252–17a, Vernon's Texas Civil Statutes), except that the records or information in the records may be transferred between statewide retirement systems to the extent necessary to administer the proportionate retirement program provided by this chapter.

Sec. ~~803.403~~ [13.403]. EMPLOYEES RETIREMENT SYSTEM REPORT. Before December 16 of each even-numbered year, the Employees Retirement System of Texas shall report to the governor and the Legislative Budget Board the current and long-range fiscal and actuarial effects of the proportionate retirement program on that system and shall include in its biennial budget estimates a reasonable amount for reimbursement of expenses incurred by the system in performing duties required of the system under this chapter.

SUBTITLE B [C]. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 811 [21]. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 811.001 [21.001]. DEFINITIONS

Sec. 811.002 [21.002]. PURPOSE OF SUBTITLE

Sec. 811.003 [21.003]. RETIREMENT SYSTEM

Sec. 811.004 [21.004]. POWERS AND PRIVILEGES

Sec. 811.005 [21.005]. EXEMPTION FROM EXECUTION

Sec. 811.006 [21.006]. ACTION INCREASING AMORTIZATION PERIOD

[Sections 811.007–811.100 [21.007–21.100] reserved for expansion]

SUBCHAPTER B. PENAL PROVISIONS

Sec. 811.101 [21.101]. CONVERSION OF FUNDS; FRAUD

Sec. 811.102 [21.102]. PENALTIES

SUBTITLE B [C]. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 811 [21]. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 811.001 [21.001]. DEFINITIONS. In this subtitle:

(1) "Accumulated contributions" means the total of amounts in a member's individual account in the employees saving account, including:

(A) amounts deducted from the compensation of the member;

(B) other member deposits required to be placed in the member's individual account; and

(C) interest credited to amounts in the member's individual account.

(2) "Actuarially reduced annuity" means an annuity payable on retirement or death occurring before a normal retirement age, the amount of which is determined by computing, using the amount of the member's service credit, the standard service retirement annuity payable at a normal retirement age and reducing it, under tables adopted by the board, by the factor applicable because of the attained age of the member.

(3) "Annuity" means an amount of money payable in monthly installments for a guaranteed period or for life, as determined by this subtitle.

(4) "Appointed officer or employee" means a person who holds a position that requires adherence to laws and rules of the state applicable to its employees, and who is paid a salary from state funds.

(5) "Board of trustees" means the persons appointed or elected under Subchapter A of Chapter 815 [25-of this subtitle] to administer the retirement system.

(6) "Combined retirement annuity" means the amount payable on retirement for service credited as a member of the employee class of membership plus any supplemental amount payable from the law enforcement and custodial officer supplemental retirement fund.

(7) "Compensation" means the base salary of a person, including amounts that would otherwise qualify as compensation but are not received directly by the person pursuant to a good faith, voluntary, written salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically

authorized by state law or to finance benefit options under a cafeteria plan qualifying under Section 125 of the Internal Revenue Code of 1986 (26 U.S.C. *Section* [Sec.] 125), plus longevity and hazardous duty pay and includes nonmonetary compensation, the value of which is determined by the retirement system, and amounts by which the person's salary is reduced under a salary reduction agreement authorized by Article 6252-3d, Revised Statutes, but excludes overtime pay.

(8) "Custodial officer" means a member of the retirement system who is employed by the Texas Department of Corrections and certified by that department as having a normal job assignment that requires frequent or infrequent regularly planned contact with, and in close proximity to, inmates of that institution without the protection of bars, doors, security screens, or similar devices and includes assignments normally involving supervision or the potential for supervision of inmates in inmate housing areas, educational or recreational facilities, industrial shops, kitchens, laundries, medical areas, agricultural shops or fields, or in other areas on or away from property of the institution.

(9) "Law enforcement officer" means a member of the retirement system who has been commissioned as a law enforcement officer by the Department of Public Safety, the Texas Alcoholic Beverage Commission, the State Purchasing and General Services Commission, Capitol Area Security Force, or the Parks and Wildlife Department and who is recognized as a commissioned law enforcement officer by the Commission on Law Enforcement Officer Standards and Education.

(10) "Membership service" means service in a position included in a class of membership, including service performed in the position before holders of the position were eligible or required to be members of the retirement system.

(11) "Normal retirement age" means an age at which a member is entitled to receive a service retirement annuity without reduction because of age.

(12) "Occupational death or disability" means death or disability from an injury or disease that directly results from a specific act or occurrence determinable by a definite time and place, and directly results from an inherent risk or hazard peculiar to a duty that arises from and in the course of state employment.

(13) "Position" means an office held by an elected or appointed officer or a job or other regular employment held by an employee, which office, job, or employment is included in a class of membership.

(14) "Retiree" means a person who, except as provided by Section 812.203 [22.203] or 814.209 [24.209 of this subtitle], receives an annuity based on service that was credited to the person in a class of membership.

(15) "Retirement system" means the Employees Retirement System of Texas.

(16) "Service credit" means the amount of membership and military service ascribed to a person's account in the retirement system for which all required contributions have been made to, and are being held by, the retirement system.

(17) "Temporary employee" means a person who has a position only until another person can be hired, only for the duration of a project scheduled to end less than six months after the date of hiring, only until a specific date less than six months after the date of hiring, or only until a volume of work is completed that is estimated to be completed in less than six months after the date of hiring.

Sec. 811.002 [21.002]. PURPOSE OF SUBTITLE. The purpose of this subtitle is to establish a program of benefits for members, retirees, and other beneficiaries of the retirement system and to establish rules for the management and operation of the retirement system.

Sec. 811.003 [21.003]. RETIREMENT SYSTEM. The retirement system is a public entity. Except as provided by Section 815.304 [25.3013 of this subtitle], the Employees

Retirement System of Texas is the name by which all its business shall be transacted, all its funds invested, and all its cash, securities, and other property held.

Sec. 811.004 [21.004]. POWERS AND PRIVILEGES. The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

Sec. 811.005 [21.005]. EXEMPTION FROM EXECUTION. All retirement annuity payments, optional benefit payments, member contributions, money in the various retirement system funds, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and local taxation, levies, sales, and any other process, and are unassignable except as provided by Section 813.103 [23.103 of this subtitle].

Sec. 811.006 [21.006]. ACTION INCREASING AMORTIZATION PERIOD. (a) A rate of member or state contributions to or a rate of interest required for the establishment of credit in the retirement system may not be reduced or eliminated, a type of service may not be made creditable in the retirement system, a limit on the maximum permissible amount of a type of creditable service may not be removed or raised, a new monetary benefit payable by the retirement system may not be established, and the determination of the amount of a monetary benefit from the system may not be increased, if, as a result of the particular action, the time, as determined by an actuarial valuation, required to amortize the unfunded actuarial liabilities of the retirement system would be increased to a period that exceeds 30 years by one or more years.

(b) If the amortization period for the unfunded actuarial liabilities of the retirement system exceeds 30 years by one or more years at the time an action described by Subsection (a) [of this section] is proposed, the proposal may not be adopted if, as a result of the adoption, the amortization period would be increased, as determined by an actuarial valuation.

[Sections 811.007–811.100 [21.007–21.100] reserved for expansion]

#### SUBCHAPTER B. PENAL PROVISIONS

Sec. 811.101 [21.101]. CONVERSION OF FUNDS; FRAUD. (a) A person commits an offense if the person knowingly or intentionally confiscates, misappropriates, or converts funds representing deductions from a member's salary either before or after the funds are received by the retirement system.

(b) A person commits an offense if the person knowingly or intentionally makes a false statement or falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the retirement system.

(c) A member commits an offense if the member knowingly receives as a salary money that should have been deducted as provided by this subtitle from the member's salary.

(d) A person commits an offense if the person knowingly or intentionally violates an applicable requirement of this subtitle other than one described by Subsection (a), (b), or (c) [of this section].

Sec. 811.102 [21.102]. PENALTIES. (a) An offense under Section 811.101(a) [21.101(a)] or 811.101(b) [21.101(b) of this subtitle] is a felony punishable by imprisonment in the Texas Department of Corrections for not less than one nor more than five years.

(b) An offense under Section 811.101(c) [21.101(c) of this subtitle] is a misdemeanor punishable by a fine of not less than \$100 nor more than \$5,000.

(c) An offense under Section 811.101(d) [21.101(d) of this subtitle] is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000.



## CHAPTER 812 [22]. MEMBERSHIP

## SUBCHAPTER A. MEMBERSHIP

## Sec. 812.001 [22.001]. MEMBERSHIP CLASSES

## Sec. 812.002 [22.002]. MEMBERSHIP IN ELECTED CLASS

## Sec. 812.003 [22.003]. MEMBERSHIP IN EMPLOYEE CLASS

## Sec. 812.004 [22.004]. TEMPORARY EMPLOYEES OVER 65

## Sec. 812.005 [22.005]. TERMINATION OF MEMBERSHIP

[Sections 812.006–812.100 [22.006–22.100] reserved for expansion]

## SUBCHAPTER B. WITHDRAWAL OF CONTRIBUTIONS

## Sec. 812.101 [22.101]. CRITERIA FOR WITHDRAWAL

## Sec. 812.102 [22.102]. PROCEDURE FOR WITHDRAWAL

## Sec. 812.103 [22.103]. EFFECT OF WITHDRAWAL

## Sec. 812.104 [22.104]. DEPOSITS REFUNDABLE

[Sections 812.105–812.200 [22.105–22.200] reserved for expansion]

## SUBCHAPTER C. RESUMPTION OF STATE SERVICE BY A RETIREE

## Sec. 812.201 [22.201]. ELIGIBILITY FOR RETIREMENT SYSTEM MEMBERSHIP

## Sec. 812.202 [22.202]. BENEFITS NOT AFFECTED

## Sec. 812.203 [22.203]. BENEFITS AFFECTED

## Sec. 812.204 [22.204]. NOTICE

## CHAPTER 812 [22]. MEMBERSHIP

## SUBCHAPTER A. MEMBERSHIP

Sec. 812.001 [22.001]. MEMBERSHIP CLASSES. The two classes of membership in the retirement system are the elected class and the employee class.

Sec. 812.002 [22.002]. MEMBERSHIP IN ELECTED CLASS. (a) Membership in the elected class of the retirement system is limited to:

(1) persons who hold state offices that are normally filled by statewide election and that are not included in the coverage of the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two;

(2) members of the legislature; and

(3) district and criminal district attorneys, to the extent that they receive salaries from the state general revenue fund.

(b) Membership in the elected class is optional.

(c) An eligible person becomes a member of the elected class by filing a notice of intention to become a member with the board of trustees on a form prescribed by the board.

Sec. 812.003 [22.003]. MEMBERSHIP IN EMPLOYEE CLASS. (a) Except as provided by Subsection (b) [of this section], membership in the employee class of the retirement system includes all employees and appointed officers of every department, commission, board, agency, or institution of the state except:

(1) independent contractors and their employees performing work for the state;

(2) persons disqualified from membership under Section 812.201 [22.201 of this subtitle]; and

(3) persons disqualified from membership under Section 812.004 ~~[22.004 of this subtitle]~~.

(b) An office or employment that is included in the coverage of the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plan One, or the Judicial Retirement System of Texas Plan Two is not a position with a department, commission, board, agency, or institution of the state for purposes of this subtitle.

(c) Membership in the employee class is mandatory for eligible persons.

(d) Membership in the employee class begins on the first day a person is employed or holds office.

Sec. 812.004 ~~[22.004]~~. TEMPORARY EMPLOYEES OVER 65. (a) A person who is at least 65 years old, who is not a member of the retirement system, and who is hired as a temporary employee is not required to become a member of the retirement system during the first six months of employment.

(b) A person described by Subsection (a) ~~[of this section]~~ becomes a member of the retirement system on the first day of the seventh calendar month in which the person is employed, unless the person has previously elected to become a member as provided by Subsection (c) ~~[of this section]~~.

(c) A person described by Subsection (a) ~~[of this section]~~ may make an election to become a member by having an application for membership filed with the retirement system not later than the 30th day after the person's first day of employment. The person must submit the application, on a form prescribed by the retirement system, to the disbursing officer of the department or agency by which the person is employed. The disbursing officer shall transmit the application to the retirement system.

(d) If a person elects to become a member as provided by Subsection (c) ~~[of this section]~~, the person's membership is considered to have begun on the first day of employment, and contributions are due for the first month of employment and are payable for each subsequent month of employment. The retirement system shall grant service credit as required by Section 813.201 ~~[23.201 of this subtitle]~~.

(e) A person described by Subsection (a) ~~[of this section]~~ who does not elect to become a member as provided by Subsection (c) ~~[of this section]~~ may not establish credit in the retirement system for service performed during the first six months of employment.

Sec. 812.005 ~~[22.005]~~. TERMINATION OF MEMBERSHIP. (a) A person's membership in the retirement system is terminated by:

- (1) death of the person;
- (2) retirement based on service credited in all classes of membership in which the person has service credit;
- (3) withdrawal of all of the person's accumulated contributions; or
- (4) transfer of the person's accumulated contributions under Section 815.502(f) ~~[25.502(f) of this subtitle]~~.

(b) A person terminates membership in one class of membership by:

- (1) retirement based on service credited in the class; or
- (2) withdrawal of the person's accumulated contributions for service credited in the class.

(c) A person may terminate membership in one class and retain membership in the other.

[Sections 812.006–812.100 ~~[22.006–22.100]~~ reserved for expansion]

#### SUBCHAPTER B. WITHDRAWAL OF CONTRIBUTIONS

Sec. 812.101 ~~[22.101]~~. CRITERIA FOR WITHDRAWAL. (a) A member of the retirement system may withdraw all of the member's accumulated contributions for service credited in the employee class of membership if:

(1) the member does not hold a position included in that class;

(2) the member does not assume or resume, during the calendar month following the month in which the member terminates employment, a position included in that class; and

(3) the member's application for withdrawal is filed before the member assumes or resumes a position included in that class.

(b) A member of the retirement system currently contributing in the elected class of membership may at any time stop contributing and withdraw *the person's* [~~his or her~~] contributions made for service credited in that class.

Sec. 812.102 [22.102]. PROCEDURE FOR WITHDRAWAL. A member initiates a withdrawal of contributions by filing an application for a refund with the retirement system or the agency or department with which the member holds or most recently held a position.

Sec. 812.103 [22.103]. EFFECT OF WITHDRAWAL. A withdrawal of contributions cancels a member's service credit and terminates *the person's* [~~his or her~~] membership in, and all rights to benefits from, each class from which the withdrawal is made.

Sec. 812.104 [22.104]. DEPOSITS REFUNDABLE. (a) Deposits representing interest or membership fees that are required of a member to establish service credit under Section 813.202, 813.302, 813.402, or 813.502 [~~23.202, 23.302, 23.402, or 23.502 of this subtitle~~] are not refundable.

(b) Deposits representing accumulated contributions are refundable to the member on application for a refund made as provided by Section 812.102 [~~22.102 of this subtitle~~].

[Sections 812.105–812.200 [22.105–22.200] reserved for expansion]

#### SUBCHAPTER C. RESUMPTION OF STATE SERVICE BY A RETIREE

Sec. 812.201 [22.201]. ELIGIBILITY FOR RETIREMENT SYSTEM MEMBERSHIP.

(a) Except as provided by Subsection (c) [~~of this section~~], a retiree may not rejoin the retirement system as a member of the class from which the person retired.

(b) A retiree who takes a position not included in a membership class from which the retiree receives retirement benefit payments:

(1) is required to become or remain a member if the position is included in the employee class; or

(2) may elect to become or remain a member if the position is included in the elected class.

(c) A person who is retired from the elected class of membership, [~~and~~] who held [~~holds~~] a position included in that class *after retirement, and who elected* [~~may elect~~] to become a member by filing notice with the retirement system before December 31, 1983, [~~Membership begins on the date notice is filed, and the member~~] may establish credit as provided by Section 813.402 [~~23.402 of this subtitle~~]. When benefit payments are resumed, the retirement system shall recompute the annuity selected at the time of the person's original retirement to include the additional service established during membership under this subsection.

Sec. 812.202 [22.202]. BENEFITS NOT AFFECTED. (a) The payment of benefits to a retiree is not affected by:

(1) the retiree's taking a position included in a class of membership other than a class from which the person retired; or

(2) the retiree's serving the state as an independent contractor.

(b) The payment of benefits to a retiree for service credited in the employee class of membership is not affected by the retiree's taking, for six months or less within any fiscal year, a position included in the employee class.

Sec. 812.203 [22.203]. BENEFITS AFFECTED. (a) The retirement system shall suspend annuity payments to a retiree for service that was credited to the retiree in the

employee class if the retiree holds a position included in the employee class for more than six months in any one fiscal year:

- (1) until the retiree no longer holds a position included in the employee class; or
- (2) until the next fiscal year, whichever comes first.

(b) In determining the number of months a retiree has held a position included in the employee class, the retirement system shall consider as a full month any part of a month for which the retiree receives compensation for service in the position.

(c) Time during which retirement benefit payments are suspended as provided by this section does not reduce the number of months payments are to be made under an optional benefit plan providing for a specific amount of benefits for a guaranteed number of months after retirement.

(d) If a retiree takes the oath for a position included in the elected class of membership, the retirement system shall suspend annuity payments to the person for service that was credited in that class, until the person no longer holds that position.

(e) If a member who originally retired before January 1, 1975, with service credited at the time of that retirement only in the elected class of membership again retires, the person at the time of subsequent retirement may select an annuity based on service in the elected class as if the person were retiring for the first time. If the person selects an annuity under ~~[Subdivision (3) or (4) of Subsection (e) of]~~ Section 814.108(c)(3) or (c)(4) ~~[24.108 of this subtitle]~~, the retirement system shall reduce the number of months of guaranteed payment by the number of months for which an annuity was paid under the person's original retirement.

Sec. 812.204 ~~[22.204]~~. NOTICE. (a) Before a retiree begins work in a position included in the employee class of membership, the retiree and the head of the department, commission, board, agency, or institution at which the retiree will resume state service each shall notify the retirement system in writing of the retiree's name, the taking of a position, and the projected dates of service.

(b) Before a retiree from the elected class of membership takes the oath of office for a position included in that class, the retiree shall notify the retirement system in writing of the taking of a position and the projected dates of service.

CHAPTER 813 [23]. CREDITABLE SERVICE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 813.001 [23.001]. TYPES OF CREDITABLE SERVICE

Sec. 813.002 [23.002]. SERVICE CREDITABLE IN A YEAR

[Sections 813.003–813.100 [23.003–23.100] reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO  
ESTABLISHMENT OF SERVICE

Sec. 813.101 [23.101]. DETERMINATION OF REQUIRED DEPOSITS

Sec. 813.102 [23.102]. SERVICE CREDIT PREVIOUSLY CANCELED

Sec. 813.103 [23.103]. LOAN TO ESTABLISH SERVICE

[Sections 813.104–813.200 [23.104–23.200] reserved for expansion]

SUBCHAPTER C. ESTABLISHMENT OF MEMBERSHIP SERVICE

Sec. 813.201 [23.201]. CURRENT SERVICE

Sec. 813.202 [23.202]. MEMBERSHIP SERVICE NOT PREVIOUSLY ESTABLISHED

[Sections 813.203–813.300 [23.203–23.300] reserved for expansion]

SUBCHAPTER D. ESTABLISHMENT OF MILITARY SERVICE

Sec. 813.301 [23.301]. CREDITABLE MILITARY SERVICE

Sec. 813.302 [23.302]. MILITARY SERVICE NOT PREVIOUSLY ESTABLISHED

Sec. 813.303 [23.303]. SERVICE CREDITED TO MEMBERSHIP CLASS

Sec. 813.304 [23.304]. USE OF MILITARY SERVICE CREDIT

[Sections 813.305–813.400 [23.305–23.400] reserved for expansion]

SUBCHAPTER E. PROVISIONS APPLICABLE TO ELECTED CLASS

Sec. 813.401 [23.401]. SERVICE CREDITABLE IN ELECTED CLASS

Sec. 813.402 [23.402]. CREDIT FOR YEAR IN WHICH ELIGIBLE FOR OFFICE

Sec. 813.403 [23.403]. ELIGIBILITY FOR SERVICE CREDIT  
PREVIOUSLY CANCELED

Sec. 813.404 [23.404]. CONTRIBUTIONS FOR SERVICE NOT  
PREVIOUSLY ESTABLISHED

[Sections 813.405–813.500 [23.405–23.500] reserved for expansion]

SUBCHAPTER F. PROVISIONS APPLICABLE TO EMPLOYEE CLASS

Sec. 813.501 [23.501]. SERVICE CREDITABLE IN EMPLOYEE CLASS

Sec. 813.502 [23.502]. ADMINISTRATIVE BOARD SERVICE

Sec. 813.503 [23.503]. CREDIT TRANSFERABLE FROM ELECTED  
TO EMPLOYEE CLASS

Sec. 813.504 [23.504]. ELIGIBILITY FOR SERVICE CREDIT  
PREVIOUSLY CANCELED

Sec. 813.505 [23.505]. CONTRIBUTIONS FOR SERVICE NOT  
PREVIOUSLY ESTABLISHED

Sec. 813.506 [23.506]. CUSTODIAL OFFICER SERVICE

Sec. 813.507 [23.507]. SERVICE OF PERSONS WHO BECAME HIGHWAY  
DEPARTMENT EMPLOYEES

Sec. 813.508 [23.508]. SERVICE OF CERTAIN MENTAL HEALTH AND  
MENTAL RETARDATION EMPLOYEES

## CHAPTER 813 [23]. CREDITABLE SERVICE

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 813.001 [23.001]. TYPES OF CREDITABLE SERVICE. The types of service creditable in the retirement system are membership service and military service.

Sec. 813.002 [23.002]. SERVICE CREDITABLE IN A YEAR. The board of trustees by rule shall determine how much service in any year is equivalent to one year of creditable service, but in no case may all of a person's service in one year be creditable as more than one year of service.

[Sections 813.003–813.100 [23.003–23.100] reserved for expansion]

## SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO ESTABLISHMENT OF SERVICE

Sec. 813.101 [23.101]. DETERMINATION OF REQUIRED DEPOSITS. The retirement system shall determine in each case the amount of money to be deposited by a member claiming credit for membership or military service previously canceled or not previously established. The system may not provide benefits based on the claimed service until the determined amount has been fully paid.

Sec. 813.102 [23.102]. SERVICE CREDIT PREVIOUSLY CANCELED. (a) A member who has withdrawn contributions and canceled service credit in a class of membership may, if eligible as provided by Section 813.403 [23.403] or 813.504 [23.504 of this subtitle], reestablish the canceled service credit in the retirement system.

(b) A member may reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from a membership class, plus all membership fees due, plus interest computed on the basis of the state fiscal year at an annual rate of five percent from the date of withdrawal to the date of redeposit.

Sec. 813.103 [23.103]. LOAN TO ESTABLISH SERVICE. (a) A member who is retiring, who previously waived membership in the retirement system, and who held a position included in the employee class of membership for at least 60 of the 120 months immediately preceding September 1, 1977, may assign retirement benefits to secure a loan for the sole purpose of establishing service credit in the system.

(b) At the time a member establishes credit under this section, the retirement system shall grant the member service credit for any membership service performed before September 1, 1947, that is not already credited.

[Section 813.104–813.200 [23.104–23.200] reserved for expansion]

## SUBCHAPTER C. ESTABLISHMENT OF MEMBERSHIP SERVICE

Sec. 813.201 [23.201]. CURRENT SERVICE. Service is credited in the applicable membership class for each month in which a member holds a position and for which the required contributions are made by the member and the state.

Sec. 813.202 [23.202]. MEMBERSHIP SERVICE NOT PREVIOUSLY ESTABLISHED. (a) Except as provided by Section 813.402 [23.402 of this subtitle] and Subsection (b) [of this section], any member may establish service credit in the retirement system for membership service not previously established.

(b) Membership service not previously credited because of a waiting period required before September 1, 1958, may be established only by a contributing member.

(c) Except as provided by Subsection (d) [of this section], a member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 813.404 [23.404] or 813.505 [23.505 of this subtitle], plus all membership fees due, plus interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date the service was performed to the date of deposit.

(d) A member claiming credit for service not previously creditable because of a waiting period required before September 1, 1958, is exempt from the payment of interest on the required contribution if the member establishes the credit before the first anniversary of the person's becoming a member of the retirement system.

(e) The state shall contribute for service established under this section an amount in the same ratio to the member's contribution for the service as the state's contribution bears to the contribution for current service required of a member of the employee class at the time the service is established under this section.

[Sections 813.203–813.300 ~~[23.203–23.300]~~ reserved for expansion]

#### SUBCHAPTER D. ESTABLISHMENT OF MILITARY SERVICE

Sec. 813.301 ~~[23.301]~~. CREDITABLE MILITARY SERVICE. (a) Military service creditable in the retirement system is active federal duty as a member of the armed forces of the United States during a time, or within 12 months after a time, that the United States is or was engaged in:

- (1) organized conflict, whether a state of war or a police action involving conflict with foreign forces; or
- (2) a crisis in this country.

(b) The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of organized conflict or crisis.

(c) A member may not establish more than 60 months of service credit in the retirement system for military service.

Sec. 813.302 ~~[23.302]~~. MILITARY SERVICE NOT PREVIOUSLY ESTABLISHED. (a) An eligible member may establish service credit in the retirement system for military service performed that is creditable as provided by Section 813.301 ~~[23.301 of this subtitle]~~.

(b) A member eligible to establish military service credit is one who:

- (1) does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent;
- (2) has been released from military duty under conditions not dishonorable; and
- (3) has credit in the retirement system for membership service performed after the member's date of release from active military duty.

(c) A member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 813.404 ~~[23.404]~~ or 813.505 ~~[23.505 of this subtitle]~~, plus, if the member does not establish the credit before the first anniversary of the date of first eligibility, interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date of first eligibility to the date of deposit.

(d) The state shall contribute for service established under this section an amount in the same ratio to the member's contribution for the service as the state's contribution bears to the contribution for current service required of a member of the employee class at the time the service is established under this section. The state's contribution shall be paid from the fund from which the member receives compensation at the time the service is established or, if the member does not hold a position at the time the service is established, from the fund from which the member received compensation when the member most recently held a position.

(e) The board of trustees may require members applying for credit under this section to submit any information the board finds necessary to enable it to determine eligibility for or amount of service or amounts of required contributions.

Sec. 813.303 ~~[23.303]~~. SERVICE CREDITED TO MEMBERSHIP CLASS. (a) Except as provided by Subsection (b) ~~[of this section]~~ or Section 813.304(d) ~~[23.304(d) of this subtitle]~~, military service is creditable in a class of membership that includes a position

held by the member who performed the service after the date of release from active military duty.

(b) Military service performed by a person who was a contributing member immediately before the date the member began military duty may be credited, at the option of the member, in the class of membership that includes the position held by the member immediately before the date the member began the military duty.

Sec. 813.304 [23.304]. USE OF MILITARY SERVICE CREDIT. (a) The retirement system shall use military service credit in computing occupational disability retirement benefits and death benefits and in determining eligibility to select an optional death benefit plan.

(b) The retirement system shall use military service credit established before January 1, 1978, in computing service retirement or nonoccupational disability retirement benefits only if the member has, without military service credit, at least 10 years of service credit in the employee class or at least 6 years of service credit in the elected class.

(c) The retirement system shall use military service credit established on or after January 1, 1978, in computing service retirement or nonoccupational disability retirement benefits only if the member who has the military service credit has enough service credit, exclusive of the military service credit, to be eligible for service retirement benefits at age 60.

(d) The board of trustees by rule may permit a person who retires with at least 10 years of service credit, excluding military service credit, to receive service retirement benefits as an elected officer for the percentage of the person's military service credit, but not more than 100 percent, that is derived by dividing the number of months served as an elected officer by 96 months.

[Sections 813.305–813.400 [23.305–23.400] reserved for expansion]

#### SUBCHAPTER E. PROVISIONS APPLICABLE TO ELECTED CLASS

Sec. 813.401 [23.401]. SERVICE CREDITABLE IN ELECTED CLASS. Service creditable in the elected class of membership is:

- (1) membership service in an office included in that class; and
- (2) military service established as provided by Subchapter D ~~[of this chapter]~~.

Sec. 813.402 [23.402]. CREDIT FOR YEAR IN WHICH ELIGIBLE FOR OFFICE. (a) A contributing member may establish service credit in the elected class for any calendar year during any part of which:

- (1) the member held an office included in that class; or
- (2) the member was eligible to take the oath for an office included in that class.

(b) A contributing member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed as provided by Section 813.404 ~~[23.404 of this subtitle]~~, plus all membership fees due, plus interest computed at an annual rate of 10 percent from the fiscal year in which the service was performed to the date of deposit.

Sec. 813.403 [23.403]. ELIGIBILITY FOR SERVICE CREDIT PREVIOUSLY CANCELED. A member may, under Section 813.102(b) ~~[23.102(b) of this subtitle]~~, reestablish service credit previously canceled if the member, after cancellation of the credit, takes an oath of office for a position included in the elected class.

Sec. 813.404 [23.404]. CONTRIBUTIONS FOR SERVICE NOT PREVIOUSLY ESTABLISHED. For each month of membership or military service not previously credited in the retirement system, a member claiming credit in the elected class shall pay a contribution in an amount equal to the greater of:

- (1) eight percent of the monthly salary paid to members of the legislature at the time the credit is established; or



(2) six percent of the monthly state salary paid to a person who holds, at the time the credit is established, the office for which credit is sought.

[Sections 813.405–813.500 [~~23.405–23.500~~] reserved for expansion]

#### SUBCHAPTER F. PROVISIONS APPLICABLE TO EMPLOYEE CLASS

Sec. 813.501 [~~23.501~~]. SERVICE CREDITABLE IN EMPLOYEE CLASS. Service creditable in the employee class of membership is:

- (1) membership service in a position included in that class;
- (2) military service established as provided by Subchapter D [~~of this chapter~~];
- (3) service creditable in or transferred from the elected class as provided by Section 813.503 [~~23.503 of this subtitle~~]; and
- (4) administrative board service established as provided by Section 813.502 [~~23.502 of this subtitle~~].

Sec. 813.502 [~~23.502~~]. ADMINISTRATIVE BOARD SERVICE. (a) A member who established during December, 1977, service credit for administrative board service performed during that month, may:

- (1) remain a contributing member of the retirement system accruing service credit in the employee class for continuous service on an eligible board; and
- (2) establish service credit for previous service on an eligible board.

(b) Contributions for administrative board service are computed on the basis of the highest salary paid during the time for which credit is sought to an officer or employee of the agency, commission, or department on whose board the member serves.

Sec. 813.503 [~~23.503~~]. CREDIT TRANSFERABLE FROM ELECTED TO EMPLOYEE CLASS. A member may establish in, or have transferred to, the employee class all service credited in the elected class, if the contributions made to establish the service in the elected class equal or exceed contributions required of a member of the employee class for the same amount of service during the same time and at the same rate of compensation. The member before retirement may transfer the service credit back to the elected class.

Sec. 813.504 [~~23.504~~]. ELIGIBILITY FOR SERVICE CREDIT PREVIOUSLY CANCELED. A member may reestablish service credit previously canceled if the member, after cancellation of the credit, holds a position for 24 months that is included in the employee class.

Sec. 813.505 [~~23.505~~]. CONTRIBUTIONS FOR SERVICE NOT PREVIOUSLY ESTABLISHED. (a) A member claiming credit in the employee class for membership service not previously established shall, for each month of the service, pay a contribution in an amount equal to the greater of:

- (1) six percent of the member's monthly state compensation for the service during the time for which credit is sought; or
- (2) \$18.

(b) A member claiming credit in the employee class for military service not previously established shall, for each month of the service, pay a contribution in an amount equal to the greater of:

- (1) the amount that the member contributed for the first full month of membership service that is after the member's date of release from active military duty and that is credited in the retirement system; or
- (2) \$18.

Sec. 813.506 [~~23.506~~]. CUSTODIAL OFFICER SERVICE. (a) The Texas Department of Corrections by rule shall adopt standards for determining eligibility for service credit as a custodial officer, based on the need to encourage early retirement of persons whose duties are hazardous and require them to have routine contact with inmates of the Texas Department of Corrections on a regular basis.

(b) To be creditable as custodial officer service, service performed must meet the requirements of the rules adopted under Subsection (a) ~~[of this section]~~ and may be performed by persons in one of the following job categories:

(1) all persons classified as Correctional Officer I through warden, including training officers and special operations reaction team officers;

(2) all other employees assigned to work on a unit and whose jobs require routine contact with inmates, including but not limited to farm managers, livestock supervisors, maintenance foremen, shop foremen, medical assistants, food service supervisors, stewards, education consultants, commodity specialists, and correctional counselors;

(3) employees assigned to administrative offices whose jobs require routine contact with inmates, including but not limited to investigators, compliance monitors, accountants routinely required to audit unit operations, sociologists, interviewers, classification officers, and supervising counselors; and

(4) administrative positions whose jobs require response to emergency situations involving inmates, including but except as specified not limited to the director, deputy directors, assistant directors, and not more than 25 administrative duty officers.

(c) The Texas Department of Corrections shall determine a person's eligibility to receive credit as a custodial officer. A determination of the department, if verified by the State Auditor under Subsection (e) ~~[of this section]~~, is final and may not be appealed. If not so verified, a determination is subject to change by the retirement system.

(d) The Texas Department of Corrections shall certify to the retirement system, at the times and in the manner prescribed by the retirement system, the names of persons determined by the department to be eligible for service credit as custodial officers and such other information as the retirement system requires to enable it properly to maintain retirement records.

(e) As part of the normal audit of the Texas Department of Corrections, the State Auditor shall verify the accuracy of reports submitted to the retirement system under this section.

Sec. 813.507 ~~[23.507]~~. SERVICE OF PERSONS WHO BECAME HIGHWAY DEPARTMENT EMPLOYEES. (a) If the legislature makes an appropriation as provided by Subsection (d) ~~[of this section]~~, the retirement system shall grant to each eligible member for continuous service performed for Nueces County before January 1, 1968, service credit in the employee class, at the rate of one month of credit for each two months of service performed for the county.

(b) A member eligible to receive service credit under this section is one who:

(1) on December 31, 1967, was an employee of Nueces County;

(2) on January 1, 1968, became an employee of the Texas Highway Department; and

(3) on September 1, 1985, was a member of the retirement system.

(c) The retirement system shall use credit granted under this section in determining eligibility for and the amount of all annuities payable by the system to or on behalf of the member entitled to the credit.

(d) The legislature may appropriate from the state highway fund an amount that is actuarially determined to be required to finance benefits based on credit to be granted under this section.

Sec. 813.508 ~~[23.508]~~. SERVICE OF CERTAIN MENTAL HEALTH AND MENTAL RETARDATION EMPLOYEES. (a) Except as provided by Subsection (i) ~~[of this section]~~, the retirement system shall grant to each member eligible as provided by this section service credit in the retirement system for all service covered by credit in the Teacher Retirement System of Texas for which deposits are maintained in an active member account immediately before the person became a member of the retirement system.

(b) A member eligible to receive credit under this section is one who:

(1) was a member of the Teacher Retirement System of Texas as an employee of the Texas Department of Mental Health and Mental Retardation on August 31, 1985, and on that date had normal duties requiring the person to provide educational services to school-age residents of state schools;

(2) became ~~[or becomes]~~ a member of this retirement system after August 31, 1985, and before September 2, 1988, as an employee of the Texas Department of Mental Health and Mental Retardation;

(3) is not a retiree of the Teacher Retirement System of Texas; and

(4) has no intervening employment between the member's previous position included in the coverage of the Teacher Retirement System of Texas and the member's employment by the Texas Department of Mental Health and Mental Retardation.

(c) The Texas Department of Mental Health and Mental Retardation shall certify employees who may be eligible to receive credit under this section and shall provide copies of the certifications to the retirement system and the Teacher Retirement System of Texas.

(d) Except as provided by Subsection (i) ~~[of this section]~~, as soon as practicable after receipt of a certification of eligibility under Subsection (c) ~~[of this section]~~, the Employees Retirement System of Texas shall determine eligibility and notify the Teacher Retirement System of Texas. On notification, the Teacher Retirement System of Texas shall transfer to the retirement system:

(1) a statement of the certified person's service credit in and compensation subject to contributions to the Teacher Retirement System of Texas;

(2) the person's accumulated contributions; and

(3) an amount from the state contribution account determined by the actuary of the Teacher Retirement System of Texas to be the amount required neither to increase nor to diminish the period required to amortize the unfunded liability of that system.

(e) A transfer under Subsection (d) ~~[of this section]~~ cancels the service credit and terminates the membership in the Teacher Retirement System of Texas of the person for whom the amounts are transferred.

(f) As soon as practicable after receipt of a transfer under Subsection (d) ~~[of this section]~~, the retirement system shall grant the member for whom the amounts were transferred the credit provided by this section.

(g) Service for which credit is established under this section will be considered as if it were performed as a member of this retirement system and credit for the service may not be reestablished in the Teacher Retirement System of Texas.

(h) The legislature may appropriate to the Employees Retirement System of Texas amounts that are determined necessary to finance additional actuarial liabilities created by this section and not financed by the transfers provided by Subsection (d) ~~[of this section]~~.

(i) The retirement system may not grant the eligible member the credit authorized by this section if:

(1) the actuary for this retirement system determines that an amount proposed to be transferred under Subsection (d) ~~[of this section]~~, together with any appropriation made available as provided by Subsection (h) ~~[of this section]~~, is not sufficient to finance the actuarial liabilities that would be created by the transfer; or

(2) the actuary for the Teacher Retirement System of Texas makes the determination provided by ~~[Subdivision (1) of Subsection (i) of]~~ Section 823.404(i)(1) ~~[33.404 of this title]~~.

**CHAPTER 814 [24]. BENEFITS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 814.001 [24.001]. TYPES OF BENEFITS**

**Sec. 814.002 [24.002]. BENEFITS FROM BOTH MEMBERSHIP CLASSES**

**Sec. 814.003 [24.003]. EFFECTIVE DATE OF RETIREMENT**

**Sec. 814.004 [24.004]. WHEN BENEFITS ARE PAYABLE**

**Sec. 814.005 [24.005]. WAIVER OF BENEFITS**

**[Sections 814.006–814.100 [24.006–24.100] reserved for expansion]**

**SUBCHAPTER B. SERVICE RETIREMENT BENEFITS**

**Sec. 814.101 [24.101]. APPLICATION FOR SERVICE RETIREMENT BENEFITS**

**Sec. 814.102 [24.102]. ELIGIBILITY OF CERTAIN ELECTED MEMBERS  
FOR SERVICE RETIREMENT**

**Sec. 814.103 [24.103]. SERVICE RETIREMENT BENEFITS FOR  
ELECTED CLASS SERVICE**

**Sec. 814.104 [24.104]. ELIGIBILITY OF MEMBER FOR SERVICE RETIREMENT**

**Sec. 814.105 [24.105]. SERVICE RETIREMENT BENEFITS FOR  
EMPLOYEE CLASS SERVICE**

**Sec. 814.106 [24.106]. SERVICE RETIREMENT BENEFITS FOR CERTAIN  
LEGISLATIVE EMPLOYEES**

**Sec. 814.107 [24.107]. SERVICE RETIREMENT BENEFITS FOR  
CERTAIN PEACE OFFICERS**

**Sec. 814.108 [24.108]. OPTIONAL SERVICE RETIREMENT BENEFITS**

**[Sections 814.109–814.200 [24.109–24.200] reserved for expansion]**

**SUBCHAPTER C. DISABILITY RETIREMENT BENEFITS**

**Sec. 814.201 [24.201]. APPLICATION FOR DISABILITY RETIREMENT BENEFITS**

**Sec. 814.202 [24.202]. ELIGIBILITY FOR DISABILITY RETIREMENT**

**Sec. 814.203 [24.203]. CERTIFICATION OF DISABILITY**

**Sec. 814.204 [24.204]. INFORMATION ABOUT OCCUPATIONAL DISABILITY**

**Sec. 814.205 [24.205]. DISABILITY RETIREMENT BENEFITS FOR  
ELECTED CLASS SERVICE**

**Sec. 814.206 [24.206]. DISABILITY RETIREMENT BENEFITS FOR  
EMPLOYEE CLASS SERVICE**

**Sec. 814.207 [24.207]. DISABILITY RETIREMENT BENEFITS FOR  
CERTAIN PEACE OFFICERS**

**Sec. 814.208 [24.208]. MEDICAL EXAMINATION OF DISABILITY RETIREE**

**Sec. 814.209 [24.209]. MODIFICATION OF DISABILITY RETIREMENT ANNUITY**

**Sec. 814.210 [24.210]. RESTORATION OF DISABILITY RETIREE  
TO ACTIVE SERVICE**

**Sec. 814.211 [24.211]. REFUND AT ANNUITY DISCONTINUANCE**

**[Sections 814.212–814.300 [24.212–24.300] reserved for expansion]**

**SUBCHAPTER D. DEATH BENEFIT ANNUITIES**

**Sec. 814.301 [24.301]. SELECTION OF DEATH BENEFIT PLAN BY MEMBER**

**Sec. 814.302 [24.302]. SELECTION OF DEATH BENEFIT PLAN BY  
SURVIVOR OF MEMBER**

Sec. 814.303 [24.303]. EFFECT OF DISABILITY RETIREMENT ON  
DEATH BENEFIT PLAN

Sec. 814.304 [24.304]. ANNUITY FOR SURVIVOR OF ELECTED MEMBER

Sec. 814.305 [24.305]. ANNUITY FOR SURVIVOR OF LAW ENFORCEMENT  
OR CUSTODIAL OFFICER

[Sections 814.306–814.400 [24.306–24.400] reserved for expansion]

SUBCHAPTER E. MEMBER DEATH BENEFITS

Sec. 814.401 [24.401]. MEMBER DEATH BENEFITS GENERALLY

Sec. 814.402 [24.402]. MEMBER OCCUPATIONAL DEATH BENEFITS

Sec. 814.403 [24.403]. RETURN OF CONTRIBUTIONS

[Sections 814.404–814.500 [24.404–24.500] reserved for expansion]

SUBCHAPTER F. RETIREE DEATH BENEFITS

Sec. 814.501 [24.501]. RETIREE DEATH BENEFITS GENERALLY

Sec. 814.502 [24.502]. DISABILITY RETIREE DEATH BENEFITS

Sec. 814.503 [24.503]. OCCUPATIONAL DISABILITY RETIREE DEATH BENEFITS

Sec. 814.504 [24.504]. RETURN OF EXCESS CONTRIBUTIONS

[Sections 814.505–814.600 [24.505–24.600] reserved for expansion]

SUBCHAPTER G. INCREASES IN BENEFITS

Sec. 814.601 [24.601]. ANNUITY INCREASE AFTER DEATH OR RETIREMENT

CHAPTER 814 [24]. BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 814.001 [24.001]. TYPES OF BENEFITS. The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) occupational disability retirement benefits;
- (3) nonoccupational disability retirement benefits; and
- (4) death benefits.

Sec. 814.002 [24.002]. BENEFITS FROM BOTH MEMBERSHIP CLASSES. (a) If a member has service credit in both classes of membership, is eligible to retire from one class, and does not hold a position included in the other class, the member may retire from both classes and receive benefits based on all service credited in the retirement system.

(b) If a member is retiring and uses service credited in a class of membership to meet a length-of-service requirement for retirement, the member must retire from that class.

Sec. 814.003 [24.003]. EFFECTIVE DATE OF RETIREMENT. (a) The effective date of a member's service retirement is the date the member designates at the time the member applies for retirement as provided by Section 814.101 [24.101 of this subtitle], but the date must be the last day of a calendar month.

(b) If a person elects to receive a standard service retirement annuity and dies during the first calendar month that begins after the effective date of the person's retirement, the person is considered to have been a contributing member at the time of death.

(c) The retirement system may allow an applicant for retirement time after the effective date of the person's retirement to make a selection of a retirement annuity. If the applicant dies within the time allowed without having given the retirement system

notice of a selection, the person is considered to have been a contributing member at the time of death.

(d) The effective date of a member's disability retirement is the date designated on the application for retirement filed by or for the member as provided by Section ~~814.201~~ ~~[24.201 of this subtitle]~~, but the date must be the last day of a calendar month.

Sec. ~~814.004~~ ~~[24.004]~~. WHEN BENEFITS ARE PAYABLE. An annuity provided by this chapter accrues for the period beginning on the first day of the month that begins after the month in which a person dies or retires, as applicable, and ending, except as otherwise provided by this chapter, on the day the person who receives the annuity dies.

Sec. ~~814.005~~ ~~[24.005]~~. WAIVER OF BENEFITS. (a) A person may, on a form prescribed by and filed with the retirement system, waive all or a portion of any benefits from the retirement system to which the person is entitled. A person may revoke a waiver of benefits in the same manner as the original waiver was made, unless the original waiver by its terms was made irrevocable.

(b) A waiver or a revocation of a waiver applies only to benefits that become payable on or after the date the document is filed.

(c) The retirement system shall transfer to the state accumulation account amounts from the appropriate benefit payment accounts not used to pay benefits because of a waiver executed under this section.

(d) The board of trustees may adopt rules for the administration of waivers under this section.

[Sections ~~814.006-814.100~~ ~~[24.006-24.100]~~ reserved for expansion]

#### SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

Sec. ~~814.101~~ ~~[24.101]~~. APPLICATION FOR SERVICE RETIREMENT BENEFITS. (a) A member may apply for a service retirement annuity by filing an application for retirement with the board of trustees.

(b) An application for a service retirement annuity may not be made:

- (1) after the date the member wishes to retire; or
- (2) more than 90 days before the date the member wishes to retire.

Sec. ~~814.102~~ ~~[24.102]~~. ELIGIBILITY OF CERTAIN ELECTED MEMBERS FOR SERVICE RETIREMENT. (a) Except as provided by rule adopted under Section ~~813.304(d)~~ ~~[23.304(d) of this subtitle]~~ or Section ~~803.202(2)~~ ~~[13.202(2) of Subtitle B of this title]~~, a member who had service credit in the elected class of membership on August 31, 1983, is eligible to retire and receive a service retirement annuity if the member:

- (1) is at least 60 years old and has 8 years of service credit in that class; or
- (2) is at least 55 years old and has 12 years of service credit in that class.

(b) A member who had service credit in the elected class on August 31, 1983, is eligible to retire and receive a service retirement annuity actuarially reduced from the standard service retirement annuity available under Subsection (a)(2) ~~[of this section]~~, if the member is at least 50 years old and has 12 years of service credit in that class.

Sec. ~~814.103~~ ~~[24.103]~~. SERVICE RETIREMENT BENEFITS FOR ELECTED CLASS SERVICE. (a) Except as provided by Subsection (b) ~~[of this section]~~, the standard service retirement annuity for service credited in the elected class of membership is an amount equal to the number of years of service credit in that class, times two percent of the state salary, as adjusted from time to time, being paid a district judge.

(b) The standard service retirement annuity for service credited in the elected class may not exceed at any time:

- (1) 60 percent of the state salary being paid a district judge, if the service was performed by a person whose membership in that class ended before September 1, 1983; or

(2) 80 percent of the state salary being paid a district judge, if the service was performed by a person who is a member of that class after August 31, 1983.

Sec. 814.104 [24.104]. ELIGIBILITY OF MEMBER FOR SERVICE RETIREMENT.

(a) Except as provided by Section 814.102 [24.102 of this subtitle] or by rule adopted under Section 813.304(d) [23.304(d) of this subtitle] or 803.202(2) [Section 13.202(2) of Subtitle B of this title], a member who has service credit in the retirement system is eligible to retire and receive a service retirement annuity, if the member:

(1) is at least 60 years old and has 10 years of service credit in the retirement system; or

(2) is at least 55 years old and has 30 years of service credit in the retirement system.

(b) A member who has service credit in the retirement system is eligible to retire and receive a service retirement annuity actuarially reduced from the standard service retirement annuity available under Subsection (a)(1) [of this section], if the member is at least 55 years old and has 25 years of service credit in the retirement system.

(c) A member who has service credit in the retirement system is eligible to retire and receive a service retirement annuity actuarially reduced from the standard service retirement annuity available under Subsection (a)(2) [of this section], if the member is at least 50 years old and has 30 years of service credit in the retirement system.

(d) A member who is at least 55 years old and who has at least 10 years of service credit as a commissioned peace officer engaged in criminal law enforcement activities of the Department of Public Safety, the Texas Alcoholic Beverage Commission, the State Purchasing and General Services Commission Capitol Area Security Force, or the Parks and Wildlife Department, or as a custodial officer, is eligible to retire and receive a service retirement annuity.

Sec. 814.105 [24.105]. SERVICE RETIREMENT BENEFITS FOR EMPLOYEE CLASS SERVICE. (a) Except as provided by this subsection and Subsection (b) [of this section], the standard service retirement annuity for service credited in the employee class of membership is an amount computed on the basis of the member's average monthly compensation for service in that class for the 36 highest months of compensation during the last 60 months of service, times 1.5 percent for each of the first 10 years of service credit in the class, plus 2 percent for each subsequent year of service credit in that class. The board of trustees by rule shall, for the purpose of computing standard service retirement annuities, increase to 1.8 percent the value of each of a person's first 10 years of service credit in the employee class of membership, unless the actuary for the retirement system certifies that the adoption of the rule will cause the time required to amortize the unfunded actuarial liabilities of the retirement system to be increased to a period that exceeds 31 years. A rule adopted under this subsection must take effect on or before January 1, 1989.

(b) The standard service retirement annuity for service credited in the employee class may not be less than \$75 a month nor more than 80 percent of the average monthly compensation computed under Subsection (a) [of this section].

(c) Notwithstanding the provisions of Subsection (a) [of this section], the standard service retirement annuity for service credited in the employee class of membership to a member whose effective date of retirement is not earlier than November 30, 1986, or later than May 31, 1987, is an amount computed on the basis of the member's average monthly compensation for service in that class for the 36 highest months of compensation during the last 60 months of service, times two percent for each year of service credit in that class. An annuity computed as provided by this subsection is subject to the requirements of Subsection (b) [of this section]. This subsection does not apply to a disability retirement annuity, death benefit annuity, or any other benefit, except a service retirement annuity, that is payable by the retirement system.

Sec. 814.106 [24.106]. SERVICE RETIREMENT BENEFITS FOR CERTAIN LEGISLATIVE EMPLOYEES. (a) A member who has at least 30 years of service credit in the retirement system and who meets an applicable age requirement in Section 814.104 [24.104 of this subtitle] is eligible to retire and receive a service retirement annuity computed as provided by this section, if the member has at least eight years of service

credit in one or more of the following legislative positions and held one of the positions before January 1, 1978:

- (1) house administrative officer;
- (2) house chief clerk;
- (3) house journal clerk;
- (4) house enrolling and engrossing clerk;
- (5) house calendar clerk;
- (6) house sergeant at arms;
- (7) secretary of the senate;
- (8) senate calendar clerk;
- (9) senate journal clerk;
- (10) senate enrolling and engrossing clerk; or
- (11) senate sergeant at arms.

(b) Except as provided by Subsection (c) [~~of this section~~], the standard service retirement annuity payable under this section is an amount computed on the basis of the member's average monthly compensation for the 36 highest months of compensation during the last 60 months of service, times 2 percent for each year of service credit in the retirement system.

(c) The standard service retirement annuity under this section may not exceed 80 percent of the average monthly compensation computed under Subsection (b) [~~of this section~~].

Sec. 814.107 [24.107]. SERVICE RETIREMENT BENEFITS FOR CERTAIN PEACE OFFICERS. (a) A member who has at least 20 years of service credit as a law enforcement or custodial officer is eligible to retire regardless of age and receive a service retirement annuity as provided by this section.

(b) The standard combined service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer is an amount computed on the basis of the member's average monthly compensation for that service for the 36 highest months of compensation during the last 60 months of service, times a percentage derived from the following table:

Years of Law Enforcement or Custodial Officer Service Credit	Percentage of Average Monthly Compensation
at least 20 but less than 21	50 percent
at least 21 but less than 22	52 percent
at least 22 but less than 23	54 percent
at least 23 but less than 24	56 percent
at least 24 but less than 25	58 percent
at least 25 but less than 26	60 percent
at least 26 but less than 27	62 percent
at least 27 but less than 28	64 percent
at least 28 but less than 29	66 percent
at least 29 but less than 30	68 percent
at least 30 but less than 31	70 percent
at least 31 but less than 32	71 percent
at least 32 but less than 33	72 percent
at least 33 but less than 34	73 percent
at least 34 but less than 35	74 percent
at least 35 but less than 36	75 percent
at least 36 but less than 37	76 percent
at least 37 but less than 38	77 percent
at least 38 but less than 39	78 percent
at least 39 but less than 40	79 percent
40 or more	80 percent



(c) The portion of the standard combined service retirement annuity that is payable from the law enforcement and custodial officer supplemental retirement fund is based on retirement at the age of 55 or older. A law enforcement or custodial officer who retires before attaining the age of 55 is entitled to that portion actuarially reduced from the annuity available at the age of 55 to the earlier retirement age.

(d) A member who retires under this section retires simultaneously from the employee class of membership, although the person must meet the applicable age requirements of Section 814.104 ~~[24.104 of this subtitle]~~ before becoming entitled to receive a service retirement annuity under Section 814.105 ~~[24.105 of this subtitle]~~. Optional retirement annuities provided by Section 814.108 ~~[24.108 of this subtitle]~~ are available to a member eligible to receive a service retirement annuity under this section, but the same optional plan and designee must be selected for the portion of the annuity payable under this section and the portion payable under Section 814.105 ~~[24.105 of this subtitle]~~.

(e) The portion of a combined service retirement annuity payable under this section from money in the law enforcement and custodial officer supplemental retirement fund is the amount remaining after deduction of any amount payable for service as a law enforcement or custodial officer under Section 814.105 ~~[24.105 of this subtitle]~~ from the total derived under Subsections (b) and (c) ~~[of this section]~~.

(f) The standard combined service retirement annuity payable for at least 20 years of service credit as a law enforcement or custodial officer may not exceed 80 percent of the higher of the average compensation computed under Section 814.105 ~~[24.105 of this subtitle]~~ or the average compensation computed under Subsection (b) ~~[of this section]~~.

(g) For purposes of this section, service as a law enforcement or custodial officer is creditable as provided by rule of the board of trustees or on a month-to-month basis, whichever is greater.

(h) If Section 815.405 ~~[25.405 of this subtitle]~~ is held to be invalid by a court of competent jurisdiction and the decision becomes final, an annuity may not be paid under this section.

Sec. 814.108 ~~[24.108]~~. **OPTIONAL SERVICE RETIREMENT BENEFITS.** (a) Instead of the standard service retirement annuity payable under Section 814.103, 814.105, or 814.106 ~~[24.103, 24.105, or 24.106 of this subtitle]~~, the standard combined service retirement annuity payable under Section 814.107 ~~[24.107 of this subtitle]~~, or an annuity actuarially reduced because of age under one of those sections, a retiring member may elect to receive an optional service retirement annuity under this section.

(b) A person who selects an optional lifetime retirement annuity must designate before the selection becomes effective one person to receive the annuity on the death of the person making the selection. A person who selects an optional retirement annuity payable for a guaranteed period may designate, before or after retirement, one or more persons to receive the annuity on the death of the person making the selection.

(c) An eligible person may select any optional retirement annuity approved by the board of trustees, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable in the same amount throughout the life of the person designated by the retiree before retirement;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of the person designated by the retiree before retirement;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to one or more designees or, if one does not exist, to the retiree's estate; or

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to one or more designees or, if one does not exist, to the retiree's estate.

(d) The computation of an optional annuity must be made without regard to the sex of the annuitant or designee involved.

[Sections 814.109–814.200 [24.109–24.200] reserved for expansion]

#### SUBCHAPTER C. DISABILITY RETIREMENT BENEFITS

Sec. 814.201 [24.201]. APPLICATION FOR DISABILITY RETIREMENT BENEFITS. (a) A member may apply for a disability retirement annuity by:

- (1) filing an application for retirement with the board of trustees; or
- (2) having an application filed with the board by the member's spouse, employer, or legal representative.

(b) An application for a disability retirement annuity may not be made:

- (1) after the date the disability retirement is to become effective; or
- (2) more than 90 days before the date the disability retirement is to become effective.

(c) An applicant must submit to medical examination and provide other pertinent information as required by the retirement system.

Sec. 814.202 [24.202]. ELIGIBILITY FOR DISABILITY RETIREMENT. (a) A member is eligible to retire for a nonoccupational disability if the member is less than 60 years old and has at least:

- (1) 8 years of membership service credit in the elected class of membership and was a member of that class on August 31, 1983;

- (2) 6 years of membership service credit in the elected class plus 2 years of military service credit established before January 1, 1978; or

- (3) 10 years of membership service credit in the retirement system.

(b) A member who has service credit in either membership class is eligible to retire for an occupational disability regardless of age or amount of service credit.

(c) A member otherwise eligible may not receive a disability retirement annuity unless the member is the subject of a certification issued as provided by Section 814.203 [24.203 of this subtitle].

Sec. 814.203 [24.203]. CERTIFICATION OF DISABILITY. As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information regarding the member's application. If the medical board finds that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired, the medical board shall issue a certification of disability and submit it to the executive director.

Sec. 814.204 [24.204]. INFORMATION ABOUT OCCUPATIONAL DISABILITY. (a) A member who applies for retirement for an occupational disability shall furnish the retirement system all information and other data requested by the retirement system and relating to the disability.

(b) The retirement system may require information and other data relating to an occupational disability retirement application to be furnished by any officer or employee of the agency with which the applicant holds a position.

(c) If a person who is requested to submit information or other data under this section withholds the requested material, the retirement system may elect to treat the application as one for nonoccupational disability retirement benefits.

(d) After receiving information and other data the retirement system considers necessary, the executive director shall determine, subject to review by the board of trustees, whether or not the disability is occupational.

Sec. 814.205 [24.205]. DISABILITY RETIREMENT BENEFITS FOR ELECTED CLASS SERVICE. (a) Except as provided by Subsection (b) [of this section], a disability retirement annuity for service credited in the elected class of membership is an amount computed in the same manner as the standard service retirement annuity, not reduced because of age, for service credited in the elected class.

(b) An occupational disability retirement annuity for service credited in the elected class is computed on the basis of the amount of the member's service credit or eight years, whichever is greater.

(c) A person who retires under this section may not select an optional retirement plan instead of the standard retirement annuity.

Sec. 814.206 [24.206]. **DISABILITY RETIREMENT BENEFITS FOR EMPLOYEE CLASS SERVICE.** (a) Except as provided by Subsection (b) [~~of this section~~] and Section 814.207 [24.207 ~~of this subtitle~~], a disability retirement annuity for service credited in the employee class of membership is an amount computed at the rate of 1.7 percent for each year of service credit in that class, times:

(1) the member's monthly compensation at the time of the disabling injury or disease, if the disability is occupational; or

(2) the member's average monthly compensation for service in the employee class for the 60 highest months of compensation during the last 120 months of service, if the disability is nonoccupational.

(b) A disability retirement annuity under this section may not be more than 70 percent of the applicable rate of compensation nor less than 35 percent of the applicable rate, or \$110 a month, whichever is greater.

Sec. 814.207 [24.207]. **DISABILITY RETIREMENT BENEFITS FOR CERTAIN PEACE OFFICERS.** (a) An annuity payable because of an occupational disability that directly results from a risk or hazard to which law enforcement or custodial officers are exposed because of the nature of law enforcement or custodial duties is payable under the same terms and conditions that apply to other occupational disability retirement annuities under this subtitle, except that the source and amount of the annuity are as provided by this section.

(b) Except as provided by Subsection (c) [~~of this section~~], an occupational disability retirement annuity under this section is an amount, but not more than 80 percent, computed on the basis of the officer's monthly compensation at the time of the disabling injury or disease, times a percentage derived by application of the table provided by Section 814.107(b) [24.107(b) ~~of this subtitle~~].

(c) A disability retirement annuity under this section is not reducible because of age and may not be less than 50 percent of the officer's monthly compensation regardless of the amount of service credited to the officer in the employee class.

(d) The portion of the annuity under this section payable from the law enforcement and custodial officer supplemental retirement fund is the amount remaining after deduction of any amount payable under Section 814.206 [24.206 ~~of this subtitle~~] except the portion of an amount that exceeds the minimum payments provided by Section 814.206(b) [24.206(b) ~~of this subtitle~~] and that is made for service other than as a law enforcement or custodial officer.

(e) If Section 815.405 [25.405 ~~of this subtitle~~] is held to be invalid by a court of competent jurisdiction and the decision becomes final, an annuity may not be paid under this section.

Sec. 814.208 [24.208]. **MEDICAL EXAMINATION OF DISABILITY RETIREE.** (a) Once each year during the first five years after a member retires for disability, and once in each three-year period after that, the retirement system may require a disability retiree who is less than 60 years old to undergo a medical examination.

(b) An examination under this section may be held at the retiree's residence or at any place mutually agreed to by the retirement system and the retiree. The retirement system may designate a physician to perform the examination.

(c) If a disability retiree refuses to submit to a medical examination as provided by this section, the executive director shall discontinue the retiree's annuity payments until the retiree submits to an examination. If a retiree has not submitted to an examination as provided by this section before the first anniversary of the date of first refusal, the executive director shall revoke all rights of the retiree to an annuity.

**Sec. 814.209 [24.209]. MODIFICATION OF DISABILITY RETIREMENT ANNUITY.** (a) If the medical board finds that a disability retiree is no longer mentally or physically incapacitated for the performance of duty or is able to engage in employment, it shall certify its findings and submit them to the executive director.

(b) If the executive director concurs in a certification under this section or finds that the retiree is engaged in employment, the director shall adjust the monthly payments to the retiree who is the subject of the certification or finding to an amount by which the retiree's average monthly compensation during the last year of service as a member exceeds the retiree's present monthly earning capacity, including the amount of the retiree's monthly annuity paid by the retirement system, as determined by the director. If the retiree's present earning capacity exceeds the average salary during the last year of membership service, the executive director shall reduce the amount of annuity payments to the retiree to the amount of the retiree's average monthly compensation during the last year of membership service.

(c) If the executive director finds, from time to time, a change in the retiree's earning capacity, the director shall adjust the retiree's annuity payments in the same manner that the original adjustment was made.

(d) The amount of an annuity adjusted under this section may not be more than the total of the amount of the annuity determined at the time of retirement plus increases provided by law after the date of retirement.

**Sec. 814.210 [24.210]. RESTORATION OF DISABILITY RETIREE TO ACTIVE SERVICE.** (a) If a retiree who is less than 60 years old and who is receiving a disability retirement annuity returns to state service or if the retiree is found to be no longer incapacitated for the further performance of duty, the person must again become a member of the retirement system or, if the person holds a position included in the elected class of membership, may elect to become a member. If a person becomes a member under this section, the board of trustees shall terminate the person's annuity payments.

(b) A person who becomes a member under this section is entitled to service credit for all service previously established and not canceled by a withdrawal of contributions.

**Sec. 814.211 [24.211]. REFUND AT ANNUITY DISCONTINUANCE.** (a) Except as provided by Subsection (b) [of this section], if a disability retirement annuity is discontinued under Section 814.208 [24.208 of this subtitle], the retiree is entitled to a lump-sum payment from the retirement annuity reserve account in an amount, if any, by which the amount in the retiree's individual account in the employees saving account at the time of disability retirement exceeds the amount of payments payable before the date the annuity was discontinued.

(b) The benefit provided by this section is not payable to a retiree who, after discontinuance of a disability retirement annuity, returns to state service.

[Sections 814.212–814.300 [24.212–24.300] reserved for expansion]

#### SUBCHAPTER D. DEATH BENEFIT ANNUITIES

**Sec. 814.301 [24.301]. SELECTION OF DEATH BENEFIT PLAN BY MEMBER.** (a) A contributing member who has at least 10 years of service credit in the elected class of membership, or a noncontributing member who has at least 12 years of service credit in the elected class, may select a death benefit plan for the payment, if the member dies while eligible to select a plan, of a death benefit annuity to a person designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Sections 814.108(c)(1) and (c)(4) [24.108(c)(1) and 24.108(c)(4) of this subtitle], payable as if the member had retired at the time of death.

(b) A member who has a total of at least 20 years of service credit in retirement systems administered by the board of trustees may select a death benefit plan for the payment, if the member dies while eligible to select a plan, of a death benefit annuity to a person designated by the member. Death benefit annuities available for selection by a

member described in this subsection are the optional annuities provided by Section 814.108(c) ~~[24.108(c) of this subtitle]~~ and, if the member has service credit in another retirement system administered by the board, any optional death benefit plan provided under that system.

(c) If a member of a retirement system administered by the board of trustees selects death benefit plans under more than one board-administered retirement system, each plan selected may take effect. The plan selected most recently governs payments based on service in a system other than the one in which the plan was selected if the amount of service credit in that other system, by itself, would be insufficient to permit selection of a death benefit plan. If a member selects a death benefit plan under only one retirement system administered by the board of trustees, the plan applies to service credit in other board-administered retirement systems.

(d) The computation of a death benefit annuity selected under this section must include the ages of the member and the member's designated beneficiary at the time of the member's death.

(e) A member may select a death benefit plan by filing an application for a plan with the retirement system on a form prescribed by the retirement system. After selection, a death benefit plan takes effect at death unless the member amends the plan, selects a retirement annuity at the time of retirement, has chosen a plan that cannot take effect, or becomes ineligible to select a plan.

Sec. 814.302 ~~[24.302]~~. SELECTION OF DEATH BENEFIT PLAN BY SURVIVOR OF MEMBER. (a) If a member eligible to select a death benefit plan under Section 814.301 ~~[24.301 of this subtitle]~~ dies without having made a selection, or if a selection cannot be made effective, the member's surviving spouse may select a plan in the same manner as if the member had made the selection. If there is no surviving spouse, the personal representative of the decedent's estate may make the selection for the benefit of the decedent's heirs or devisees.

(b) If a person dies who, at the time of death, was a contributing member of a retirement program administered by the board of trustees and was eligible, having met the requirements of service credit and attained age, for a service retirement annuity based on service in one or more board-administered programs, but was not eligible to select a death benefit plan, the person's surviving spouse may select a plan in the same manner that the decedent could have made the selection if the decedent had retired on the last day of the month in which *the person* ~~[he or she]~~ died. If there is no surviving spouse, the guardian of the decedent's surviving minor children may select a plan. If the decedent is not survived by a spouse or minor children, an annuity may not be paid under this subsection.

Sec. 814.303 ~~[24.303]~~. EFFECT OF DISABILITY RETIREMENT ON DEATH BENEFIT PLAN. (a) At the time of death of a person who was receiving a disability retirement annuity, a death benefit annuity selected by the retiree while a member takes effect.

(b) If the retiree had not selected a death benefit plan before retirement or if the plan cannot be made effective, a death benefit annuity may not be paid.

Sec. 814.304 ~~[24.304]~~. ANNUITY FOR SURVIVOR OF ELECTED MEMBER. (a) Except as provided by Subsections (b) and (c) ~~[of this section]~~, if a member who has at least eight years of service credit in the elected class of membership dies, a death benefit annuity is payable in an amount computed at the rate of one-half of the standard service retirement annuity to which the member would have been entitled at the member's age at the time of death or at the age of 60, whichever is later.

(b) The annuity provided by this section is payable only to the member's surviving spouse. If the member is not survived by a spouse, a benefit may not be paid under this section.

(c) An annuity may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section 814.301 ~~[24.301 of this subtitle]~~.

Sec. ~~814.305~~ [24.305]. ANNUITY FOR SURVIVOR OF LAW ENFORCEMENT OR CUSTODIAL OFFICER. (a) If a member who has at least 20 years of service credit as a law enforcement or custodial officer dies, the amount of the death benefit annuity payable for the member's service as a law enforcement or custodial officer is derivable from the greater of:

- (1) an amount computed as provided by Section ~~814.105~~ [24.105 of this subtitle], including any applicable reduction factors; or
- (2) an amount computed as provided by Section ~~814.107~~ [24.107 of this subtitle], including any applicable reduction factors.

(b) The portion of a death benefit annuity computed as provided by [Subdivision (2) of Subsection (a)(2) of this section] that is payable from the law enforcement and custodial officer supplemental retirement fund is the amount remaining after deduction of an amount computed for service as a law enforcement or custodial officer as provided by Section ~~814.105~~ [24.105 of this subtitle], including any applicable reduction factors, from the amount computed as provided by [Subdivision (2) of Subsection (a)(2) of this section].

[Sections ~~814.306-814.400~~ [24.306-24.400] reserved for expansion]

#### SUBCHAPTER E. MEMBER DEATH BENEFITS

Sec. ~~814.401~~ [24.401]. MEMBER DEATH BENEFITS GENERALLY. (a) Except as provided by Subsection (d) [of this section], if a member dies under a circumstance described in Subsection (c) [of this section], a lump-sum death benefit is payable from the state accumulation account in an amount computed at the rate of five percent of the amount in the member's individual account in the employees saving account at the time of death, times the number of full years of service credit the member had at the time of death.

(b) The benefit provided by this section is payable to a person designated by the member in a signed document filed with the retirement system. If a member does not designate a beneficiary or if the beneficiary does not survive the member, the benefit is payable to the member's estate.

(c) A benefit is payable under this section only if the member at the time of death was:

- (1) actively employed by the state;
- (2) receiving workers' compensation benefits for an injury sustained while employed by the state; or
- (3) on authorized sick leave.

(d) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section ~~814.301~~ [24.301 of this subtitle].

Sec. ~~814.402~~ [24.402]. MEMBER OCCUPATIONAL DEATH BENEFITS. (a) Except as provided by Subsection (b) [of this section], if a member dies and the executive director determines that the death was an occupational death, a lump-sum death benefit is payable from the state accumulation account in an amount equal to one year's salary, computed on the basis of the member's rate of compensation at the time of death.

(b) The benefit provided by this section is payable only to the member's surviving spouse or, if there is no surviving spouse, to the guardian of the member's surviving dependent minor children. If the member is not survived by a spouse or dependent minor children, a benefit may not be paid under this section.

Sec. ~~814.403~~ [24.403]. RETURN OF CONTRIBUTIONS. (a) Except as provided by Subsection (c) [of this section], if a member dies before retirement, the amount in the member's individual account in the employees saving account at the time of death is payable as a lump-sum death benefit.

(b) The benefit provided by this section is payable to a person designated by the member in a signed document filed with the retirement system. If a member does not

designate a beneficiary or if the beneficiary does not survive the member, the benefit is payable to the member's estate.

(c) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section ~~814.301~~ [24.301 of this subtitle].

[Sections ~~814.404–814.500~~ [24.404–24.500] reserved for expansion]

#### SUBCHAPTER F. RETIREE DEATH BENEFITS

Sec. ~~814.501~~ [24.501]. RETIREE DEATH BENEFITS GENERALLY. (a) A lump-sum death benefit in the amount of \$5,000 is payable if the board of trustees receives proof satisfactory to it of the death, on or after September 1, 1975, of a person retired under a retirement system administered by the board.

(b) The benefit provided by this section is payable to a person designated by the retiree in a signed and witnessed document filed with the retirement system. If a retiree does not designate a beneficiary or if the beneficiary does not survive the retiree, the benefit is payable to the retiree's estate.

Sec. ~~814.502~~ [24.502]. DISABILITY RETIREE DEATH BENEFITS. (a) Except as provided by Subsection (b) [~~of this section~~], if a person who receives a disability retirement annuity dies, a lump-sum death benefit is payable in the manner provided by Section ~~814.401~~ [24.401 of this subtitle], except that the amount is computed at the rate of five percent of the amount in the retiree's individual account in the employees saving account at the time of disability retirement, times the number of full years of service credit the retiree had at the time of retirement.

(b) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section ~~814.301~~ [24.301 of this subtitle].

Sec. ~~814.503~~ [24.503]. OCCUPATIONAL DISABILITY RETIREE DEATH BENEFITS. (a) Except as provided by Subsection (b) [~~of this section~~], if a person who receives an occupational disability retirement annuity dies and the executive director determines that the death was an occupational death, a lump-sum death benefit is payable from the state accumulation account in an amount equal to one year's salary, computed on the basis of the retiree's rate of compensation at the time of disability retirement.

(b) The benefit provided by this section is payable only to the retiree's surviving spouse or, if there is no surviving spouse, to the guardian of the retiree's surviving dependent minor children. If the retiree is not survived by a spouse or dependent minor children, a benefit may not be paid under this section.

Sec. ~~814.504~~ [24.504]. RETURN OF EXCESS CONTRIBUTIONS. (a) Except as provided by Subsection (c) [~~of this section~~], if a person who receives a disability retirement annuity dies, a lump-sum death benefit is payable from the retirement annuity reserve account in an amount, if any, by which the amount in the retiree's individual account in the employees saving account at the time of disability retirement exceeds the amount of annuity payments payable before the retiree's death.

(b) The benefit provided by this section is payable to a person designated by the retiree in a signed and witnessed document filed with the retirement system. If a retiree does not designate a beneficiary or if the beneficiary does not survive the retiree, the benefit is payable to the retiree's estate.

(c) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section ~~814.301~~ [24.301 of this subtitle].

[Sections 814.505–814.600 [24.505–24.600] reserved for expansion]

SUBCHAPTER G. INCREASES IN BENEFITS

Sec. 814.601 [24.601]. ANNUITY INCREASE AFTER DEATH OR RETIREMENT.  
(a) Except as provided by Subsections (b) and (e) [~~of this section~~], on the first day of each fiscal year, the retirement system shall increase the amounts of annuities that are:

(1) computed as provided by Section 814.105 [24.105 ~~of this subtitle~~] or a predecessor to that section, Section 814.206 [24.206 ~~of this subtitle~~] or a predecessor to that section, or if the standard annuity is derived from Section 814.105 [24.105] or a predecessor, as provided by Section 814.108 [24.108 ~~of this subtitle~~] or a predecessor to that section;

(2) based on service that was credited in the retirement system as employee class service; and

(3) payable to a retiree of the retirement system, to the survivor of a retiree of the retirement system, or to the survivor of a deceased member of the retirement system.

(b) The retirement system may not increase under this section the amount of an annuity unless the retirement or death on which the annuity is based occurred before the first day of the preceding fiscal year.

(c) The legislature may appropriate money from the general revenue fund to pay the costs of increasing the amounts of annuities under this section. On the first day of each fiscal year, the state comptroller of public accounts shall transfer to the retirement system any money appropriated for the fiscal year for the purpose of this section.

(d) If the amount of money appropriated for a fiscal year is insufficient to finance the rate of increase in annuities specified in the *Act* [~~act~~] making the appropriation or if the *Act* [~~act~~] fails to specify a rate of increase, the board of trustees shall set the rate as the rate that the amount of money appropriated will finance for the duration of the annuities payable to those persons entitled to receive an increase in annuities under this section.

(e) If an appropriation is not made for a fiscal year for the purpose of this section, the retirement system may not increase under this section the amount of annuities for that year.



CHAPTER 815 [25]. ADMINISTRATION

SUBCHAPTER A. BOARD OF TRUSTEES

Sec. 815.001 [25.001]. COMPOSITION OF BOARD OF TRUSTEES

Sec. 815.002 [25.002]. APPOINTED TRUSTEES

Sec. 815.003 [25.003]. ELECTED TRUSTEES

Sec. 815.004 [25.004]. OATH OF OFFICE

Sec. 815.005 [25.005]. APPLICATION OF SUNSET ACT

Sec. 815.006 [25.006]. COMPENSATION; EXPENSES

Sec. 815.007 [25.007]. VOTING

[Sections 815.008–815.100 [25.008–25.100] reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

Sec. 815.101 [25.101]. GENERAL ADMINISTRATION

Sec. 815.102 [25.102]. RULEMAKING

Sec. 815.103 [25.103]. ADMINISTERING SYSTEM ASSETS

Sec. 815.104 [25.104]. DESIGNATION OF AUTHORITY TO SIGN VOUCHERS

Sec. 815.105 [25.105]. ADOPTING TABLES

Sec. 815.106 [25.106]. INTEREST RATE FOR BENEFIT  
INCREASE RESERVE ACCOUNT

Sec. 815.107 [25.107]. RECORDS OF BOARD OF TRUSTEES

Sec. 815.108 [25.108]. REPORT

Sec. 815.109 [25.109]. CORRECTION OF ERRORS

[Sections 815.110–815.200 [25.110–25.200] reserved for expansion]

SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

Sec. 815.201 [25.201]. CHAIRMAN

Sec. 815.202 [25.202]. EXECUTIVE DIRECTOR

Sec. 815.203 [25.203]. LEGAL ADVISOR

Sec. 815.204 [25.204]. MEDICAL BOARD

Sec. 815.205 [25.205]. OTHER PHYSICIANS

Sec. 815.206 [25.206]. ACTUARY

Sec. 815.207 [25.207]. STATE TREASURER

Sec. 815.208 [25.208]. COMPENSATION OF EMPLOYEES;  
PAYMENT OF EXPENSES

Sec. 815.209 [25.209]. SURETY BONDS

Sec. 815.210 [25.210]. INTEREST IN INVESTMENT PROFITS PROHIBITED

[Sections 815.211–815.300 [25.211–25.300] reserved for expansion]

SUBCHAPTER D. MANAGEMENT OF ASSETS

Sec. 815.301 [25.301]. INVESTMENT OF ASSETS

Sec. 815.302 [25.3011]. INVESTMENT BY BANK IN SHORT-TERM SECURITIES

Sec. 815.303 [25.3012]. LOAN OF SECURITIES BY BANK

Sec. 815.304 [25.3013]. NOMINEE TO HOLD SECURITIES

Sec. 815.305 [25.302]. INVESTMENT OF LAW ENFORCEMENT AND CUSTODIAL OFFICER SUPPLEMENTAL RETIREMENT FUND ASSETS

Sec. 815.306 [25.303]. RESTRICTIONS ON INVESTMENTS

Sec. 815.307 [25.304]. DUTY OF CARE

Sec. 815.308 [25.305]. CASH ON HAND

Sec. 815.309 [25.306]. CREDITING SYSTEM ASSETS

Sec. 815.310 [25.3061]. TRUST FUND

Sec. 815.311 [25.307]. EMPLOYEES SAVING ACCOUNT

Sec. 815.312 [25.308]. STATE ACCUMULATION ACCOUNT

Sec. 815.313 [25.309]. RETIREMENT ANNUITY RESERVE ACCOUNT

Sec. 815.314 [25.310]. INTEREST ACCOUNT

Sec. 815.315 [25.311]. EXPENSE ACCOUNT

Sec. 815.316 [25.312]. BENEFIT INCREASE RESERVE ACCOUNT

Sec. 815.317 [25.313]. LAW ENFORCEMENT AND CUSTODIAL OFFICER SUPPLEMENTAL RETIREMENT FUND

Sec. 815.318 [25.314]. TRANSFER OF ASSETS FROM INTEREST ACCOUNT

Sec. 815.319 [25.315]. TRANSFER OF ASSETS ON RETIREMENT AND RESTORATION TO ACTIVE SERVICE

Sec. 815.320 [25.316]. TRANSFER OF ASSETS TO PAY BENEFIT INCREASES

Sec. 815.321 [25.317]. TRANSFER OF ASSETS FOR DEATH BENEFIT ANNUITIES

Sec. 815.322 [25.318]. TRANSFER OF ASSETS TO ADJUST AMOUNT IN RETIREMENT ANNUITY RESERVE ACCOUNT

[Sections 815.323–815.400 [25.319–25.400] reserved for expansion]

**SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS**

Sec. 815.401 [25.401]. COLLECTION OF MEMBERSHIP FEES

Sec. 815.402 [25.402]. COLLECTION OF MEMBER CONTRIBUTIONS

Sec. 815.403 [25.403]. COLLECTION OF STATE CONTRIBUTIONS

Sec. 815.404 [25.404]. USE OF FEDERAL MONEY

Sec. 815.405 [25.405]. CONTRIBUTIONS TO LAW ENFORCEMENT AND CUSTODIAL OFFICER SUPPLEMENTAL RETIREMENT FUND

Sec. 815.406 [25.406]. EMPLOYER PICKUP OF MEMBER CONTRIBUTIONS

[Sections 815.407–815.500 [25.407–25.500] reserved for expansion]

**SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES**

Sec. 815.501 [25.501]. STATEMENT OF AMOUNT IN INDIVIDUAL ACCOUNTS

Sec. 815.502 [25.502]. TRANSFER OF ACCUMULATED CONTRIBUTIONS IN CERTAIN CIRCUMSTANCES

Sec. 815.503 [25.503]. MEMBERS' RECORDS

Sec. 815.504 [25.504]. REPRODUCTION AND PRESERVATION OF RECORDS

Sec. 815.505 [25.505]. CERTIFICATION OF NAMES OF LAW ENFORCEMENT AND CUSTODIAL OFFICERS

Sec. 815.506 [25.506]. BUDGET AND ACTUARIAL INFORMATION

Sec. 815.507 [25.507]. PLAN QUALIFICATION

## CHAPTER 815 [25]. ADMINISTRATION

## SUBCHAPTER A. BOARD OF TRUSTEES

Sec. 815.001 [25.001]. COMPOSITION OF BOARD OF TRUSTEES. The board of trustees is composed of six members.

Sec. 815.002 [25.002]. APPOINTED TRUSTEES. (a) Three members of the board of trustees are appointed with the advice and consent of the senate, one each by:

- (1) the governor;
- (2) the chief justice of the Supreme Court of Texas; and
- (3) the speaker of the house of representatives.

(b) Appointed trustees hold office for staggered terms of six years, with the term of one trustee expiring on August 31 of each even-numbered year.

(c) Before the 11th day after the day on which an appointment is made, the person appointed to the board shall subscribe to the constitutional oath and the oath of office provided by Section 815.004 [25.004 of this subtitle].

Sec. 815.003 [25.003]. ELECTED TRUSTEES. (a) Three members of the board of trustees are nominated and elected by members of the retirement system under rules adopted by the board.

(b) To be eligible to serve as an elected member of the board, a person must be a member of the retirement system and must hold a position that:

- (1) is included in the employee class of membership; and
- (2) is not with an agency or department with which another trustee holds a position.

(c) Elected trustees hold office for staggered terms of six years, with the term of one trustee expiring on August 31 of each odd-numbered year.

(d) The board shall hold elections for the members to nominate and elect a trustee before August 1 of each odd-numbered year. The board shall make ballots available to members of the retirement system and all votes must be cast on those ballots.

(e) A person elected to the board of trustees must subscribe to the constitutional oath and the oath of office provided by Section 815.004 [25.004 of this subtitle] before beginning his or her term.

(f) The board shall fill vacancies of elected positions on the board for the unexpired terms.

(g) A person elected to the board as provided by this section is required to serve on the board.

Sec. 815.004 [25.004]. OATH OF OFFICE. (a) Before taking office as a member of the board of trustees, a person shall subscribe to the following oath of office:

I do solemnly swear that I will, to the best of my ability, discharge the duties of a trustee of the employees retirement system, that I will diligently and honestly administer the affairs of the board of trustees of the retirement system, and that I will not knowingly violate or willingly permit to be violated any of the laws applicable to the retirement system.

(b) A person may subscribe to the oath of office before any officer qualified to administer oaths in the state and shall file the subscribed oath in the office of the secretary of state.

Sec. 815.005 [25.005]. APPLICATION OF SUNSET ACT. The board of trustees of the Employees Retirement System of Texas is subject to the Texas Sunset Act (Chapter 325[, Government Code]), but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished September 1, 1991, and every 12th year after that date are reviewed.

Sec. 815.006 [25.006]. COMPENSATION; EXPENSES. (a) Trustees who are contributing members of the retirement system serve without compensation but are entitled to

reimbursement for all necessary expenses that they incur in the performance of official board duties.

(b) Subject to the approval of the board of trustees, trustees who are not contributing members of the retirement system may receive:

- (1) compensation; and
- (2) all necessary expenses that they incur in the performance of official board duties.

Sec. 815.007 [25.007]. VOTING. (a) Each trustee is entitled to one vote.

(b) At any meeting of the board, a majority of the members present is necessary for a decision by the trustees.

[Sections 815.008–815.100 [25.008–25.100] reserved for expansion]

#### SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 815.101 [25.101]. GENERAL ADMINISTRATION. The board of trustees is responsible for the general administration and operation of the retirement system.

Sec. 815.102 [25.102]. RULEMAKING. Subject to the limitations of this subtitle, the board of trustees may adopt rules for:

- (1) eligibility of membership;
- (2) the administration of the funds of the retirement system;
- (3) the program of supplemental benefits for law enforcement and custodial officers; and
- (4) the transaction of any other business of the board.

Sec. 815.103 [25.103]. ADMINISTERING SYSTEM ASSETS. (a) The board of trustees shall administer all assets of the retirement system. The board is the trustee of the system's assets.

(b) The board of trustees may acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any security, evidence of debt, or other investment in which the retirement system's assets may be invested.

(c) The board of trustees may authorize the executive director to acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any security, evidence of debt, or other investment in which assets of the law enforcement and custodial officer supplemental retirement fund may be invested.

Sec. 815.104 [25.104]. DESIGNATION OF AUTHORITY TO SIGN VOUCHERS. The board of trustees shall file with the comptroller of public accounts a duly attested copy of a board resolution that designates the authorized representatives, as provided by this chapter, who have authority to sign vouchers for payment from the funds administered by the board of trustees.

Sec. 815.105 [25.105]. ADOPTING TABLES. The board of trustees shall adopt mortality, service, and other tables the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality, service, and compensation experience of the system's members and beneficiaries.

Sec. 815.106 [25.106]. INTEREST RATE FOR BENEFIT INCREASE RESERVE ACCOUNT. After consulting with the actuary, the board of trustees shall set a rate of interest that represents a reasonable recognition of earnings from investment of assets in the benefit increase reserve account.

Sec. 815.107 [25.107]. RECORDS OF BOARD OF TRUSTEES. The board shall keep a record of all of its proceedings. Records of the board are open to public inspection.

Sec. 815.108 [25.108]. REPORT. Annually, the retirement system shall publish a report containing the following information:

- (1) the retirement system's fiscal transactions of the preceding fiscal year;
- (2) the amount of the system's accumulated cash and securities; and

(3) the balance sheet showing the financial condition of the system for the preceding fiscal year.

Sec. 815.109 [25.109]. CORRECTION OF ERRORS. If an error in the records of the retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the retirement system shall correct the error and so far as practicable shall adjust future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid.

[Sections 815.110–815.200 [25.110–25.200] reserved for expansion]

#### SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

Sec. 815.201 [25.201]. CHAIRMAN. The board of trustees shall elect a chairman. The chairman must be a member of the board.

Sec. 815.202 [25.202]. EXECUTIVE DIRECTOR. (a) The board of trustees, by a majority vote of all members, shall appoint a person other than a member of the board to serve at the board's will as executive director.

(b) The executive director is not a member of the board of trustees.

(c) To be eligible to serve as the executive director, a person must:

(1) have been a citizen of the state for the three years immediately preceding *the person's* [his or her] appointment; and

(2) have executive ability and experience to carry out the duties of the office.

(d) The executive director shall recommend to the board of trustees actuarial and other services required to transact the business of the retirement system.

(e) Annually, the executive director shall prepare an itemized budget showing the amount required to pay the retirement system's expenses for the following fiscal year and shall submit the budget to the board of trustees for review and adoption.

Sec. 815.203 [25.203]. LEGAL ADVISER. The attorney general of the state is the legal adviser of the board of trustees. The attorney general shall represent the board in all litigation.

Sec. 815.204 [25.204]. MEDICAL BOARD. (a) The board of trustees shall designate a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in the state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

(1) review all medical examinations required by this subtitle;

(2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and

(3) report in writing to the executive director its conclusions and recommendations on all matters referred to it.

Sec. 815.205 [25.205]. OTHER PHYSICIANS. The board of trustees may employ physicians in addition to the medical board to report on special cases.

Sec. 815.206 [25.206]. ACTUARY. (a) The board of trustees shall designate an actuary.

(b) The actuary must be thoroughly qualified to be the technical adviser of the board of trustees on matters concerning operation of the funds of the retirement system.

(c) At least once every five years the actuary, under the direction of the board of trustees, shall:

(1) make an actuarial investigation of the mortality, service, and compensation experience of the members and beneficiaries of the retirement system; and

(2) make a valuation of the assets and liabilities of the retirement system's funds.

(d) On the basis of tables adopted by the board of trustees under Section 815.105 ~~[25.105 of this subtitle]~~, the actuary shall make a valuation of the assets and liabilities of the retirement system's funds annually.

(e) The actuary shall perform such other duties as are required by the board of trustees.

Sec. 815.207 ~~[25.207]~~. STATE TREASURER. (a) Except as provided by Section 815.302 or 815.303 ~~[25.3011 or 25.3012 of this subtitle]~~, the state treasurer is the custodian of the securities, bonds, and funds of the retirement system.

(b) The state treasurer shall pay money from the funds of the retirement system on warrants drawn by the comptroller supported only on vouchers signed by the executive director and the chairman of the board of trustees or their authorized representatives.

(c) The state treasurer annually shall furnish to the board of trustees a sworn statement of the amount of the retirement system's assets in the treasurer's custody.

Sec. 815.208 ~~[25.208]~~. COMPENSATION OF EMPLOYEES; PAYMENT OF EXPENSES. (a) The board of trustees shall compensate all persons whom it employs and shall pay all expenses necessary to operate the retirement system at rates and in amounts approved by the board. Those rates and amounts may not exceed those paid for the same or similar service for the state.

(b) Except as provided by Subsection (c) ~~[of this section]~~, the board of trustees shall pay compensation and expenses required by Subsection (a) ~~[of this section]~~ from the expense account.

(c) The board of trustees shall make payments from the law enforcement and custodial officer supplemental retirement fund for services rendered by the actuary for that fund and approved by the board.

Sec. 815.209 ~~[25.209]~~. SURETY BONDS. (a) The state treasurer shall give a surety bond in the amount of \$50,000.

(b) The executive director shall give a surety bond in the amount of \$25,000.

(c) The board of trustees may require any trustee or employee of the board, other than the executive director, to give a surety bond in an amount determined by the board. The bond is conditioned on the bonded person's faithful execution of the duties of his or her office.

(d) All surety bonds must be:

(1) made with a commercially sound and solvent surety company that is authorized to do business in the state;

(2) made payable to the board of trustees; and

(3) approved by the board of trustees and the attorney general of the state.

(e) The board of trustees shall pay from the expense account all expenses for the execution of a bond under this section, including premiums.

Sec. 815.210 ~~[25.210]~~. INTEREST IN INVESTMENT PROFITS PROHIBITED. Except for an interest in retirement funds as a member of the retirement system, a trustee or employee of the board of trustees may not have a direct or indirect interest in the gains or profits of any investment made by the board and may not receive any pay or emolument for services other than *the person's* ~~[his or her]~~ designated compensation and authorized expenses.

[Sections 815.211–815.300 ~~[25.211–25.300]~~ reserved for expansion]

#### SUBCHAPTER D. MANAGEMENT OF ASSETS

Sec. 815.301 ~~[25.301]~~. INVESTMENT OF ASSETS. (a) The board of trustees shall:

(1) invest the assets of the retirement system, other than assets of the law enforcement and custodial officer supplemental retirement fund, as a single fund without distinction as to their source; and

(2) hold securities purchased with the assets described by Subsection (a)(1) ~~[of this section]~~ collectively for the proportionate benefit of all accounts in the trust fund that are listed in Section 815.310(b) ~~[25.3061(b) of this subtitle]~~.

(b) Except for assets of the law enforcement and custodial officer supplemental retirement fund, the board of trustees may invest and reinvest any of the retirement system's assets in the following:

(1) bonds, notes, or other evidences of indebtedness, whether general or specific obligations, whose principal and interest are guaranteed by the United States, an agency of the United States, the state, or any political subdivision of the state;

(2) home office facilities, including land, equipment, and office building, used in administering the retirement system;

(3) corporate bonds, corporate notes, and other evidences of indebtedness of a corporation if the corporation was created or exists under the laws of a state or the United States;

(4) common and preferred stocks of companies incorporated within the United States that have paid cash dividends for 10 consecutive years immediately before the date of purchase and, unless the stocks are bank or insurance stocks, that are listed on an exchange registered with the Securities and Exchange Commission or its successor; and

(5) obligations issued, assumed, or guaranteed by the African Development Bank.

(c) The board of trustees may contract with private professional investment managers to assist the board in investing the assets of the retirement system.

(d) The board of trustees shall employ one or more well-recognized performance measurement services to evaluate and analyze the investment results of those assets of the retirement system. Each service shall compare investment results with the written investment objectives developed by the board, and shall also compare the investment of the assets of the retirement system with the investment of other public and private funds.

(e) The board of trustees shall develop written investment objectives concerning the investment of assets of the retirement system. The objectives may address desired rates of return, risks involved, investment time frames, and any other relevant considerations.

Sec. 815.302 ~~[25.3011]~~. INVESTMENT BY BANK IN SHORT-TERM SECURITIES. The retirement system may contract with one or more commercial banks, designated by the state treasurer as provided in Section 3, Chapter 401, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-5a, Vernon's Texas Civil Statutes), other than a bank owned by a bank holding company domiciled in a state other than Texas, to serve as custodians of the system's cash or securities pending completion of an investment settlement and may authorize a bank acting as custodian to invest the cash so held in such short-term securities as the board of trustees determines, subject to the restrictions on investments provided by Sections 815.301(b) ~~[Subsection (b) of Section 25.301]~~ and 815.306 ~~[by Section 25.303 of this subtitle]~~.

Sec. 815.303 ~~[25.3012]~~. LOAN OF SECURITIES BY BANK. (a) The retirement system may contract with one or more commercial banks, designated by the state treasurer as provided in Section 3, Chapter 401, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-5a, Vernon's Texas Civil Statutes), other than a bank owned by a bank holding company domiciled in a state other than Texas, to serve as custodians of the system's securities and to lend the securities under rules adopted by the board of trustees and as required by this section.

(b) To be eligible to lend securities under this section, a bank must:

(1) be experienced in the operation of a fully secured securities loan program;

(2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities entrusted to it as a custodian;

(3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from

the bank's service as custodian of the system's securities and its operation of a securities loan program for the system's securities;

(4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the bank collateral in the form of cash or United States government securities in an amount equal to not less than 100 percent of the market value, from time to time, of the loaned securities; and

(5) speedily collect and remit to the state treasurer on the day of collection by the fastest available means any dividends or interest collectible by it on securities held by it as custodian together with identification of the source of the dividends or interest.

Sec. 815.304 [25.3013]. **NOMINEE TO HOLD SECURITIES.** (a) The retirement system may select a nominee to hold securities of the system in the name of the nominee without mention of ownership by the retirement system in the stock certificate, bond certificate, stock registration book, or other evidence of title to the securities. If a nominee is selected under this section, the records and all relevant reports or accounts of the retirement system must show the ownership by the system of the securities held by the nominee and the facts regarding the system's holdings.

(b) A nominee selected under this section shall file with the retirement system a signed statement showing the system's ownership of the securities. A nominee also shall endorse any stock certificate in blank, execute an appropriate stock power in blank and attach it to the stock certificate, or execute a conveyance or assignment of the title to the securities, and promptly deposit it with the appropriate custodian.

(c) A nominee may not possess the securities and may have access to them only under the immediate supervision of the custodian of the securities.

(d) A nominee may be a partnership composed of either retirement system employees or members of the board of trustees, or both. The retirement system may contract with a partnership under this subsection without complying with statutory requirements for awarding contracts for services by state agencies. A partner who is also a retirement system employee or board member may accept no compensation or profits from the partnership and holds any profits of the partnership in trust for the retirement system. The retirement system may indemnify its employees or board members acting in their capacities as individual partners of the nominee and may purchase performance bonds for them. The retirement system also may pay expenses and provide facilities, services, supplies, and materials necessary to the functioning of the partnership as its nominee. Any expense reimbursements must be at the same rate that the partner incurring the expense would have received as an employee or board member. Amounts may not be expended for office facilities for the partnership separate from those of the retirement system.

(e) The records of a nominee shall be maintained by the retirement system and are subject to audit by the state auditor.

Sec. 815.305 [25.302]. **INVESTMENT OF LAW ENFORCEMENT AND CUSTODIAL OFFICER SUPPLEMENTAL RETIREMENT FUND ASSETS.** The executive director, as authorized by the board of trustees, may invest and reinvest the amount of money in the law enforcement and custodial officer supplemental retirement fund that exceeds the amount necessary for current operations in the following securities:

(1) interest-bearing bonds of the United States or any authority or agency of the United States;

(2) any security on which the United States or any authority or agency of the United States guarantees the payment of principal and interest;

(3) corporate bonds or debentures of a company that is incorporated in the United States and is rated "A" or better by a nationally recognized bond rating service approved by the board of trustees; and

(4) short-term securities approved by the board of trustees.

Sec. 815.306 [25.303]. **RESTRICTIONS ON INVESTMENTS.** (a) The board of trustees may not invest in the stock of one corporation more than one percent of the book



value of the total assets of the retirement system, excluding the assets of the law enforcement and custodial officer supplemental retirement fund.

(b) The retirement system may not own more than five percent of the voting stock of one corporation.

(c) At any particular time, 25 percent or more of the book value of the assets of the retirement system, excluding the assets of the law enforcement and custodial officer supplemental retirement fund, must be invested in government securities described by Section 815.301(b)(1) ~~[25.301(b)(1) of this subtitle]~~.

Sec. 815.307 ~~[25.304]~~. DUTY OF CARE. In making investments for the retirement system, the board of trustees or the executive director shall exercise the judgment and care, under the circumstances prevailing at the time of the investment, that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in speculation but when making a permanent disposition of their funds, considering the probable income from the disposition and the probable safety of their capital.

Sec. 815.308 ~~[25.305]~~. CASH ON HAND. (a) The board of trustees shall keep a sufficient amount of cash on hand to make payments as they become due each year under the retirement system.

(b) The amount of cash on hand may not exceed 10 percent of the total amount in the funds of the retirement system on deposit with the state treasurer, excluding the assets of the law enforcement and custodial officer supplemental retirement fund.

Sec. 815.309 ~~[25.306]~~. CREDITING SYSTEM ASSETS. All assets of the retirement system, except assets of the law enforcement and custodial officer supplemental retirement fund, shall be credited to the trust fund established by Section 815.310 ~~[25.3061 of this subtitle]~~.

Sec. 815.310 ~~[25.3061]~~. TRUST FUND. (a) A trust fund for the Employees Retirement System of Texas is established with the state treasurer.

(b) All assets of the trust fund shall be credited, according to the purpose for which they are held, to one of the following accounts:

- (1) employees saving account;
- (2) state accumulation account;
- (3) retirement annuity reserve account;
- (4) interest account;
- (5) expense account; or
- (6) benefit increase reserve account.

Sec. 815.311 ~~[25.307]~~. EMPLOYEES SAVING ACCOUNT. (a) The retirement system shall deposit in a member's individual account in the employees saving account the following amounts:

- (1) the amount of contributions to the retirement system that is deducted from the member's compensation;
- (2) the portion of a deposit required to reinstate service credit previously canceled that represents only the amount withdrawn;
- (3) the portion of a deposit required to establish service credit not previously established that represents only the required contribution; and
- (4) the portion of a deposit required to establish military service credit that represents only the member's contribution for that credit.

(b) Interest on money in an individual account in the employees saving account is earned monthly and is computed at the rate of five percent a year on the mean balance of the member's account for the fiscal year.

(c) Unless an account is closed before the last day of the fiscal year, interest is computed for the fiscal year and is credited to the member's account as of the last day of the fiscal year.

(d) If a member's account is closed before the last day of the fiscal year, interest is computed for the following period:

(1) if the account is closed because of death, from the first day of the fiscal year through the last day of the month that preceded the month in which the member's death occurred;

(2) if the account is closed by withdrawal of contributions, from the first day of the fiscal year through the last day of the month that precedes the month in which the withdrawal request is validated by the retirement system; or

(3) if the account is closed because of retirement, from the first day of the fiscal year through the effective date of retirement.

Sec. 815.312 [25.308]. STATE ACCUMULATION ACCOUNT. (a) The retirement system shall deposit in the state accumulation account all contributions for retirement made by the state to the retirement system and transfer to the account the amounts required by Section 815.318 or 815.502 [~~25.314 or 25.502 of this subtitle~~].

(b) The retirement system also shall deposit in the state accumulation account the interest portion of the following deposits made by members:

(1) deposits required to reinstate service previously canceled;

(2) deposits required to establish service credit not previously established; and

(3) deposits required to establish military service credit.

Sec. 815.313 [25.309]. RETIREMENT ANNUITY RESERVE ACCOUNT. (a) The retirement system shall transfer to the retirement annuity reserve account money as required by Section 815.318, 815.319, 815.320, or 815.321 [~~Sections 25.314, 25.315, 25.316, and 25.317 of this subtitle~~].

(b) The retirement system shall use the money in the account to pay annuities as provided by this subtitle.

Sec. 815.314 [25.310]. INTEREST ACCOUNT. Except as provided by Section 815.317 [~~25.313 of this subtitle~~], the retirement system shall deposit in the interest account all income, interest, and dividends from deposits and investments of assets of the retirement system.

Sec. 815.315 [25.311]. EXPENSE ACCOUNT. (a) The retirement system shall deposit in the expense account membership fees, money required to be transferred to the account under Section 815.318 [~~25.314 of this subtitle~~], and any appropriations made by the legislature to the account.

(b) The retirement system shall pay from the expense account administration and maintenance expenses of the retirement system except those expenses the payment of which is provided for by Section 815.208(c) or 815.317(b) [~~25.208(e) or 25.313(b) of this subtitle~~].

Sec. 815.316 [25.312]. BENEFIT INCREASE RESERVE ACCOUNT. The retirement system shall transfer to the benefit increase reserve account money required to be deposited in the account under Section 815.318 [~~25.314 of this subtitle~~] and money appropriated to pay increases in preexisting annuities if the increases:

(1) are payments for service credited in the employee class; and

(2) were authorized by the legislature after April 30, 1977.

Sec. 815.317 [25.313]. LAW ENFORCEMENT AND CUSTODIAL OFFICER SUPPLEMENTAL RETIREMENT FUND. (a) The retirement system shall deposit in the law enforcement and custodial officer supplemental retirement fund payments made as provided by Section 815.405 [~~25.405 of this subtitle~~], any appropriations made by the legislature to the fund, and proceeds from investment of the fund.

(b) The retirement system may use money from the fund only to pay supplemental retirement and death benefits to law enforcement and custodial officers as provided by this subtitle and to pay for the administration of the fund.

(c) Money appropriated to pay benefits from the fund as provided by this subtitle may not be diverted or used to pay any other benefits.

Sec. 815.318 [25.314]. TRANSFER OF ASSETS FROM INTEREST ACCOUNT. (a) The board of trustees shall transfer from the interest account to the employees saving account amounts of interest computed under Section 815.311 [25.307 of this subtitle] at the following times:

(1) as required during the fiscal year for a member's account in the retirement system that is closed before the last day of the fiscal year; and

(2) as of the last day of the fiscal year for a member's account that is not closed before the last day of the fiscal year.

(b) As required during the year, the board of trustees shall transfer from the interest account to the expense account amounts it determines necessary for the payment of the retirement system's expenses that exceed the amount of money available for those expenses.

(c) As of the last day of each fiscal year, the board of trustees shall transfer from the interest account to the retirement annuity reserve account an amount equal to:

(1) five percent of the mean amount in the retirement annuity reserve account for that fiscal year; or

(2) an amount computed at a greater rate if the actuary recommends the greater rate to finance adequately the annuities payable from the retirement annuity reserve account.

(d) As of the last day of each fiscal year, the board of trustees shall transfer from the interest account to the benefit increase account an amount computed at the rate set by the board under Section 815.106 [25.106 of this subtitle].

(e) After making the transfers required by this section, the board of trustees, as of the last day of each fiscal year, shall transfer the amount remaining in the interest account to the state accumulation account.

Sec. 815.319 [25.315]. TRANSFER OF ASSETS ON RETIREMENT AND RESTORATION TO ACTIVE SERVICE. (a) When a member retires, the retirement system shall transfer:

(1) from the employees saving account to the retirement annuity reserve account, an amount equal to the member's accumulated contributions; and

(2) from the state accumulation account to the retirement annuity reserve account, an amount equal to the difference between the total reserve at present worth reserve value of the member's retirement annuity and the amount credited to the member's individual account as of the day of retirement.

(b) If a person who receives disability benefits has those benefits terminated under Section 814.210 [24.210 of this subtitle], the retirement system shall transfer the balance of the person's retirement reserve from the retirement annuity reserve account to the employees saving account and to the state accumulation account in proportion to the original amount transferred to the retirement annuity reserve account from those accounts.

Sec. 815.320 [25.316]. TRANSFER OF ASSETS TO PAY BENEFIT INCREASES. Each month the retirement system shall transfer from the benefit increase reserve account to the retirement annuity reserve account the amount required to pay increases in preexisting annuities authorized by the legislature after April 30, 1977, for service credited in the employee class.

Sec. 815.321 [25.317]. TRANSFER OF ASSETS FOR DEATH BENEFIT ANNUITIES. (a) When a member dies who selected or was eligible to select a death benefit plan, or whose beneficiary is eligible to receive an annuity under [Subsection (b) of] Section 814.302(b) [24.302] or 814.304 [Section 24.304 of this subtitle], the retirement system shall transfer:

(1) from the employees saving account to the retirement annuity reserve account, an amount equal to the member's accumulated contributions; and

(2) from the state accumulation account to the retirement annuity reserve account, an amount equal to the difference between the total reserve, at present worth reserve

value, of the death benefit annuity and the amount credited to the member's individual account as of the day of the member's death.

Sec. ~~815.322~~ [25.318]. TRANSFER OF ASSETS TO ADJUST AMOUNT IN RETIREMENT ANNUITY RESERVE ACCOUNT. After making the transfers required by Section ~~815.318~~ [25.314 of this subtitle], the board of trustees shall make a transfer to make the amount in the retirement annuity reserve account equal, as of the last day of each fiscal year, to the actuarial present value of the annuities for which a transfer of assets has been made as required by Section ~~815.319~~ [25.315 of this subtitle]. The transfer shall be:

(1) a transfer from the retirement annuity reserve account to the state accumulation account of the amount by which the amount in the retirement annuity reserve account exceeds the actuarial present value of the annuities; or

(2) a transfer from the state accumulation account to the retirement annuity reserve account of the amount by which the actuarial present value of the annuities exceeds the amount in the retirement annuity reserve account.

[Sections ~~815.323-815.400~~ [25.319-25.400] reserved for expansion]

#### SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS

Sec. ~~815.401~~ [25.401]. COLLECTION OF MEMBERSHIP FEES. (a) Each member annually shall pay a membership fee of \$2. A contributing member shall pay the fee with the member's first contribution to the retirement system in each fiscal year in the manner provided by Section ~~815.402~~ [25.402 of this subtitle] for payment of the member's contribution to the retirement system.

(b) If the membership fee is not paid with the member's first contribution of the year to the retirement system, the board of trustees may deduct the amount of the fee from that contribution or from any benefit to which the member becomes entitled.

(c) If the legislature appropriates, on behalf of each contributing member for any fiscal year, a membership fee to be deposited in the expense account in an amount equal to or greater than the membership fee required by Subsection (a) [of this section], the members are not required to pay the membership fee for that year.

Sec. ~~815.402~~ [25.402]. COLLECTION OF MEMBER CONTRIBUTIONS. (a) Each payroll period, each department or agency of the state shall cause to be deducted from each member's compensation a contribution of:

(1) six percent of the compensation if the member is not a member of the legislature; or

(2) eight percent of the compensation if the member is a member of the legislature.

(b) To facilitate the making of deductions, the board of trustees may modify a member's required deductions by an amount that does not exceed one-tenth of one percent of the annual compensation on which the deduction is made.

(c) Each department or agency head shall certify to the board of trustees and to the disbursing officer of the department or agency on each payroll, or in another manner prescribed by the board, the amounts to be deducted from each member's compensation.

(d) The disbursing officer of each department or agency on authority from the department or agency head shall:

(1) make deductions from each member's compensation for contributions to the retirement system;

(2) transmit monthly, or at the time designated by the board of trustees, a certified copy of the payroll or report to the retirement system; and

(3) pay the amount deducted to the retirement system for deposit in the employees saving account.

(e) The retirement system shall record all receipts of member contributions and shall deliver the receipts to the state treasurer. The state treasurer shall credit the receipts to the employees saving account.

(f) The deductions required by this section shall be made even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(g) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payment period.

Sec. 815.403 [25.403]. COLLECTION OF STATE CONTRIBUTIONS. (a) During each fiscal year, the state shall contribute to the retirement system:

(1) an amount equal to 7.4 percent of the total compensation of all members of the retirement system for that year;

(2) money to pay lump-sum death benefits for retirees under Section 814.501 [24.501 of this subtitle];

(3) money necessary for the administration and payment of benefits from the law enforcement and custodial officer supplemental retirement fund; and

(4) money for service credit not previously established, as provided by Section 813.202(e) [23.202(e)] or 813.302(d) [23.302(d) of this subtitle].

(b) Before November 2 of each even-numbered year, the retirement system shall certify to the *Legislative Budget Board* [legislative budget board] and to the budget division of the governor's office for review:

(1) an estimate of the amount necessary to pay the state's contribution under Subsections (a)(1), (a)(2), and (a)(4) [of this section] for the following biennium;

(2) the estimated amount, based on actuarial valuations, of appropriated funds required in addition to other available money to finance all benefits provided from the law enforcement and custodial officer supplemental retirement fund for the following biennium;

(3) the estimated amount, based on actuarial valuations, of appropriated funds required for the following biennium to fully finance, within a period of not more than 36 years after September 1, 1979, liabilities of the law enforcement and custodial officer supplemental retirement fund accrued because of service performed before September 1, 1979; and

(4) as a separate item, an estimate of the amount required to administer the law enforcement and custodial officer supplemental retirement fund for the following biennium.

(c) The amounts certified under Subsection (b) [of this section] shall be included in the budget of the state that the governor submits to the legislature.

(d) Before September 1 of each year, the retirement system shall certify to the state comptroller of public accounts and to the state treasurer:

(1) an estimate of the amount necessary to pay the state's contribution under Subsection (a)(1) [of this section] for the following fiscal year;

(2) an estimate of the amount necessary to pay membership fees for the following fiscal year, if the legislature has appropriated money for that purpose; and

(3) an estimate of the amount required to pay lump-sum death benefits for retirees under Section 814.501 [24.501 of this subtitle] for the following fiscal year.

(e) All money allocated and appropriated by the state to the retirement system for benefits provided by the retirement system, except money for the payment of lump-sum death benefits and for the payment of benefits from the law enforcement and custodial officer supplemental retirement fund, shall be paid, based on the annual estimate of the retirement system, in monthly installments to the state accumulation fund. The money required for state contributions and membership fees shall be from respective funds appropriated to pay the compensation of the member for whose benefit the contribution

or fee is paid. If the total of the estimated required payments is not equal to the total of the actual payments required for a fiscal year, the retirement system shall certify to the state comptroller of public accounts and the state treasurer at the end of that year the amount required for necessary adjustments, and the state treasurer shall make the required adjustments.

(f) On certification by the retirement system, the comptroller of public accounts shall transfer from the general revenue fund to the state accumulation account of the retirement system the amount then required for the payment of lump-sum death benefits for retirees under Section 814.501 ~~[24.501 of this subtitle]~~.

Sec. 815.404 ~~[25.404]~~. USE OF FEDERAL MONEY. If federal regulations prohibit an agency's use of money provided under *federal job training laws* ~~[the Comprehensive Employment and Training Act of 1973, Public Law 93-203]~~ as state contributions, an agency shall use other money available to it to make state contributions to the retirement system for affected employees.

Sec. 815.405 ~~[25.405]~~. CONTRIBUTIONS TO LAW ENFORCEMENT AND CUSTODIAL OFFICER SUPPLEMENTAL RETIREMENT FUND. The Department of Public Safety shall transfer monthly to the law enforcement and custodial officer supplemental retirement fund \$1.50 of the motor vehicle inspection fee for each vehicle inspected as required under Section 141(c) of the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), and \$3 for each vehicle inspected as required by Section 141(c-1) of that Act.

Sec. 815.406 ~~[25.406]~~. EMPLOYER PICKUP OF MEMBER CONTRIBUTIONS. (a) The state shall pick up the employee contribution required of each of its employees by Section 815.402 ~~[25.402 of this subtitle]~~ for all compensation earned after December 31, 1987. The state shall pay to the retirement system the picked-up contributions from the same source of funds that is used in paying earnings to the employees. Such payments shall be in lieu of contributions by the employees. The state shall pick up these contributions by a corresponding reduction in the cash salary of the employees, by an offset against a future salary increase, or by a combination of a salary reduction and offset against a future salary increase. Employees *do* ~~[shall]~~ not have the option of choosing to receive the contributed amounts directly instead of having them paid by the state to the retirement system.

(b) Contributions picked up as provided *by* ~~[in]~~ Subsection (a) ~~[of this section]~~ shall be treated as employer contributions in determining tax treatment of the amounts under the United States Internal Revenue Code; however, the state shall continue to withhold federal income taxes on these picked-up contributions until the Internal Revenue Service determines or the federal courts rule that pursuant to Section 414(h) of the Internal Revenue Code of 1986 (26 U.S.C. ~~[U.S.C.A.]~~ Section 414 ~~[414(h)]~~) these picked-up contributions *may* ~~[shall]~~ not be included as gross income of the employee until such time as they are distributed or made available.

(c) Employee contributions picked up as provided *by* ~~[in]~~ Subsection (a) ~~[of this section]~~ shall be transmitted to the retirement system in the manner required by Section 815.402 ~~[25.402 of this subtitle]~~. Employee contributions picked up by the state and credited to the employee's account shall be treated for all other purposes as if the amount were a part of the member's compensation and had been deducted pursuant to ~~[the provisions of]~~ Section 815.403(a) ~~[25.403(a) of this subtitle]~~.

[Sections 815.407-815.500 ~~[25.407-25.500]~~ reserved for expansion]

#### SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

Sec. 815.501 ~~[25.501]~~. STATEMENT OF AMOUNT IN INDIVIDUAL ACCOUNTS. The retirement system shall furnish to a member, on written request, a statement of the amount credited to the member's individual account. The board is not required to furnish more than one statement to each member in a fiscal year.

Sec. 815.502 ~~[25.502]~~. TRANSFER OF ACCUMULATED CONTRIBUTIONS IN CERTAIN CIRCUMSTANCES. (a) Except as provided by Subsection (b) ~~[of this section]~~,

if a valid application for payment based on money or credit in a member's individual account in the employees saving account is not filed with the retirement system before the expiration of five years after the last day of the most recent month of service for which the member has credit in the retirement system, the retirement system shall mail a notice to the member at the member's most recent address as shown on system records. If no address is available or if the notice is returned unclaimed, the retirement system shall cause a notice to be published in a newspaper of general circulation in the state.

(b) This section does not apply to an account of a member who has enough service credit in the retirement system to enable the member to retire at an attained age.

(c) A notice under this section must include the name of the member, the name of the agency at which the member most recently acquired service credit, a statement that the member is entitled to a payment of money, and a statement of the procedure for keeping the member's account open or claiming a payment.

(d) Before the 31st day after the day a notice is mailed or published under this section, whichever is later, an application must be filed with the retirement system:

(1) by the member, requesting that the account be kept open; or

(2) by the member, or, if the member has died, by any other person entitled to payment based on the member's account, requesting payment based on money or credit in the account.

(e) If a valid application is made as provided by Subsection (d)(2) ~~[of this section]~~, the retirement system shall pay the applicant any benefit to which the applicant is entitled.

(f) If a valid application is not made as provided by Subsection (d) ~~[of this section]~~, the retirement system shall cancel the service credit in the member's account, transfer the accumulated contributions in the account to the state accumulation account, and close the member's account.

(g) Except as provided by Subsection (j) ~~[of this section]~~, if a person files with the retirement system a valid application for payment based on a closed account the accumulated contributions of which have been transferred under Subsection (f) ~~[of this section]~~, the retirement system shall restore to the employees saving account the amount transferred and credit canceled and shall pay any benefit to which the applicant is entitled.

(h) Except as provided by Subsection (j) ~~[of this section]~~, if a person whose accumulated contributions have been transferred under Subsection (f) ~~[of this section]~~ again becomes a member, the retirement system shall reinstate in the member's active individual account in the employees saving account the amount transferred and credit canceled.

(i) Except as provided by Subsection (j) ~~[of this section]~~, if a person whose accumulated contributions have been transferred under Subsection (f) ~~[of this section]~~ would be eligible to receive a benefit from the retirement system under Chapter 803 ~~[13 of this title]~~ were the person's account not closed, the person may file with the retirement system an application for retirement, and the retirement system shall reopen the person's account and reinstate the canceled credit for the purpose of allowing the person to retire.

(j) A payment under Subsection (g) ~~[of this section]~~, a reinstatement under Subsection (h) ~~[of this section]~~, or a retirement under Subsection (i) ~~[of this section]~~ precludes action under any other of those subsections.

(k) If a member makes an application as provided by Subsection (d)(1) ~~[of this section]~~, the retirement system, after the fifth anniversary of the date the application was filed, shall reinstitute the process provided by Subsections (a), (c), (d), (e), and (f) ~~[of this section]~~, if disposition of money and credit in the account has not been made before that time.

(l) The retirement system may apply the process provided by Subsections (a), (c), (d), (e), and (f) ~~[of this section]~~ to other money it holds for payment, if the system first determines that no claim for the money is likely to be filed.

Sec. 815.503 ~~[25.503]~~. MEMBERS' RECORDS. Records of members and beneficiaries under retirement plans administered by the retirement system that are in the custody of the system are considered to be personnel records and are required to be treated as confidential information under Section 3(a)(1), Chapter 424, Acts of the 63rd Legislature, 1973~~[-as amended]~~ (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 815.504 ~~[25.504]~~. REPRODUCTION AND PRESERVATION OF RECORDS. (a) The retirement system may photograph, microphotograph, or film any record in its possession.

(b) If a record is reproduced under Subsection (a) ~~[of this section]~~, the retirement system may destroy or dispose of the original record if the system first:

- (1) places the reproduction in a conveniently accessible file; and
- (2) provides for the preservation, examination, and use of the reproduction.

(c) A photograph, microphotograph, or film of a record reproduced under Subsection (a) ~~[of this section]~~ is equivalent to the original record for all purposes, including introduction as evidence in all courts and administrative agency proceedings. A duly certified or authenticated copy of such a photograph, microphotograph, or film is admissible as evidence equally with the original photograph, microphotograph, or film.

(d) The executive director or an authorized representative may certify the authenticity of a photograph, microphotograph, or film of a record reproduced under this section and shall charge a fee for the certified photograph, microphotograph, or film as provided by law.

(e) Certified records shall be furnished to any person who is authorized by law to receive them.

Sec. 815.505 ~~[25.505]~~. CERTIFICATION OF NAMES OF LAW ENFORCEMENT AND CUSTODIAL OFFICERS. As of the last day of each fiscal year, the Department of Public Safety, the Texas Alcoholic Beverage Commission, the Parks and Wildlife Department, the State Purchasing and General Services Commission, and the Texas Department of Corrections shall certify to the retirement system the names of employees and the amount of service each employee performed as a law enforcement officer or custodial officer during that fiscal year.

Sec. 815.506 ~~[25.506]~~. BUDGET AND ACTUARIAL INFORMATION. The retirement system shall keep, in convenient form, data necessary for actuarial valuation of the funds of the retirement system and for checking the system's expenses.

Sec. 815.507 ~~[25.507]~~. PLAN QUALIFICATION. (a) It is intended that the provisions of this subtitle be construed and administered in a manner that the retirement system's benefit plan will be considered a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. ~~[U.S.C.A.]~~ Section 401 ~~[401(a)]~~). The board of trustees may adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan. Rules adopted by the board of trustees are to be considered a part of the plan.

(b) In determining qualification status under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. ~~[U.S.C.A.]~~ Section 401 ~~[401(a)]~~), the retirement system's benefit plan shall be considered the primary retirement plan for members of the retirement system.



## SUBTITLE C [D]. TEACHER RETIREMENT SYSTEM OF TEXAS

## CHAPTER 821 [31]. GENERAL PROVISIONS

## SUBCHAPTER A. GENERAL PROVISIONS

## Sec. 821.001 [31.001]. DEFINITIONS

## Sec. 821.002 [31.002]. PURPOSE OF SUBTITLE

## Sec. 821.003 [31.003]. RETIREMENT SYSTEM

## Sec. 821.004 [31.004]. POWERS AND PRIVILEGES

## Sec. 821.005 [31.005]. EXEMPTION FROM EXECUTION

## Sec. 821.006 [31.006]. ACTION INCREASING AMORTIZATION PERIOD

[Sections 821.007–821.100 [31.007–31.100] reserved for expansion]

## SUBCHAPTER B. PENAL PROVISIONS

## Sec. 821.101 [31.101]. CONVERSION OF FUNDS; FRAUD

## Sec. 821.102 [31.102]. PENALTIES

## Sec. 821.103 [31.103]. CANCELLATION OF TEACHER CERTIFICATE

## SUBTITLE C [D]. TEACHER RETIREMENT SYSTEM OF TEXAS

## CHAPTER 821 [31]. GENERAL PROVISIONS

## SUBCHAPTER A. GENERAL PROVISIONS

## Sec. 821.001 [31.001]. DEFINITIONS. In this subtitle:

(1) "Accumulated contributions" means the total of amounts in a member's individual account in the member savings account, including:

(A) amounts deducted from the compensation of the member;

(B) other member deposits required to be placed in the member's individual account; and

(C) interest credited to amounts in the member's individual account.

(2) "Actuarial equivalent" of a benefit means a benefit of equal monetary value [when] computed on the basis of annuity or mortality tables and on an interest or discount rate that is adopted by the board of trustees for the purpose from time to time and that is in force on the effective date of the benefit.

(3) "Actuarially reduced" means reduced to the actuarial equivalent.

(4) "Annual compensation" means the compensation to a member of the retirement system for service during a school year that is reportable and subject to contributions as provided by Section 822.201 [32.201 of this subtitle].

(5) "Board of trustees" means the board appointed under this subtitle to administer the retirement system.

(6) "Employee" means a person who is employed, as determined by the retirement system, on other than a temporary basis by an employer for at least one-half time at a regular rate of pay comparable to that of other persons employed in similar positions.

(7) "Employer" means the state or any of its designated agents or agencies responsible for public education, including the governing board of any school district created under the laws of this state, any county school board, the board of trustees, the State Board of Education, the Central Education Agency, the board of regents of any college or university, or any other legally constituted board or agency of any public school.

(8) "Faculty member" means a person who is employed by an institution of higher education on a full-time basis as:

- (A) a member of the faculty whose duties include teaching or research;
- (B) an administrator responsible for teaching and research faculty;
- (C) a member of the administrative staff of the Texas Higher Education Coordinating Board; or
- (D) a professional librarian, a president, a chancellor, a vice-president, a vice-chancellor, or other professional staff person whose national mobility requirements are similar to those of faculty members and who fills a position that is the subject of nationwide searches in the academic community.

(9) "Governing board" means the body responsible for policy direction of an institution of higher education.

(10) "Institution of higher education" has the meaning provided for that term in Section 61.003, [Texas] Education Code.

(11) "Membership service" means service during a time that a person is both an employee and a member of the retirement system.

(12) "Public school" means an educational institution or organization in this state that is entitled by law to be supported in whole or in part by state, county, school district, or other municipal corporation funds.

(13) "Retirement" means the withdrawal from service with a retirement benefit granted under this subtitle.

(14) "Retirement system" means the Teacher Retirement System of Texas.

(15) "School year" means:

(A) a 12-month period beginning approximately September 1 and ending approximately August 31 of the next calendar year; or

(B) for a member whose contract begins after June 30 and continues after August 31 of the same calendar year, a period not to include more than 12 months beginning on the date the contract begins.

(16) "Service" means the time a person is an employee.

(17) "Service credit" means the amount of prior, membership, military, or equivalent membership service credited to a person's account in the retirement system.

Sec. ~~821.002~~ [31.002]. **PURPOSE OF SUBTITLE.** The purpose of this subtitle is to establish a program of benefits for members, retirees, and other beneficiaries of the retirement system and to establish rules for membership in and the management and operation of the retirement system.

Sec. ~~821.003~~ [31.003]. **RETIREMENT SYSTEM.** The retirement system is an agency of the state. Except as provided by Section ~~825.904~~ [35.3013 of this subtitle], the Teacher Retirement System of Texas is the name by which all business of the retirement system shall be transacted, all its funds invested, and all its cash, securities, and other property held.

Sec. ~~821.004~~ [31.004]. **POWERS AND PRIVILEGES.** The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

Sec. ~~821.005~~ [31.005]. **EXEMPTION FROM EXECUTION.** All retirement allowances, annuities, refunded contributions, optional benefits, money in the various retirement system accounts, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and municipal taxation, sale, levy, and any other process, and are unassignable.

Sec. ~~821.006~~ [31.006]. **ACTION INCREASING AMORTIZATION PERIOD.** (a) A rate of member or state contributions to or a rate of interest or the rate of a fee required for the establishment of credit in the retirement system may not be reduced or eliminated, a type of service may not be made creditable in the retirement system, a limit on the maximum permissible amount of a type of creditable service may not be removed or

raised, a new monetary benefit payable by the retirement system may not be established, and the determination of the amount of a monetary benefit from the system may not be increased, if, as a result of the particular action, the time, as determined by an actuarial valuation, required to amortize the unfunded actuarial liabilities of the retirement system would be increased to a period that exceeds 30 years by one or more years.

(b) If the amortization period for the unfunded actuarial liabilities of the retirement system exceeds 30 years by one or more years at the time an action described by Subsection (a) ~~[of this section]~~ is proposed, the proposal may not be adopted if, as a result of the adoption, the amortization period would be increased, as determined by an actuarial valuation.

[Sections 821.007–821.100 ~~[31.007–31.100]~~ reserved for expansion]

#### SUBCHAPTER B. PENAL PROVISIONS

Sec. 821.101 ~~[31.101]~~. CONVERSION OF FUNDS; FRAUD. (a) A person commits an offense if the person knowingly or intentionally confiscates, misappropriates, or converts funds that represent deductions from a member's salary or that belong to the retirement system.

(b) A person commits an offense if the person knowingly or intentionally makes or permits the making of a false record for or statement to the retirement system in an attempt to defraud the retirement system.

(c) A member commits an offense if the member intentionally receives as a salary money that should have been deducted as provided by this subtitle from the member's salary.

(d) A person commits an offense if the person knowingly or intentionally violates a requirement of this subtitle other than ones described by Subsection (a), (b), or (c) ~~[of this section]~~.

Sec. 821.102 ~~[31.102]~~. PENALTIES. (a) An offense under Section 821.101(a) ~~[31.101(a)]~~ or 821.101(b) ~~[31.101(b) of this subtitle]~~ is a felony punishable by imprisonment in the Texas Department of Corrections for not less than one nor more than five years.

(b) An offense under Section 821.101(c) ~~[31.101(c) of this subtitle]~~ is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500.

(c) An offense under Section 821.101(d) ~~[31.101(d) of this subtitle]~~ is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000.

Sec. 821.103 ~~[31.103]~~. CANCELLATION OF TEACHER CERTIFICATE. (a) After receiving notice from the board of trustees of an offense under Section 821.101 ~~[31.101 of this subtitle]~~ and after a hearing, the state commissioner of education may cancel the teacher certificate of a person if the commissioner determines that the person committed the offense.

(b) A person whose teacher certificate is canceled under this section may appeal the commissioner's decision to the State Board of Education.

(c) A criminal prosecution of an offender under Section 821.101 ~~[31.101 of this subtitle]~~ is not a prerequisite to action by the commissioner under this section.

## CHAPTER 822 [32]. MEMBERSHIP

## SUBCHAPTER A. MEMBERSHIP

## Sec. 822.001 [32.001]. MEMBERSHIP REQUIREMENT

Sec. 822.002 [32.002]. EXCEPTIONS TO MEMBERSHIP REQUIREMENT Sec. 822.003 [32.003]. TERMINATION OF MEMBERSHIP Sec. 822.004 [32.004]. EFFECT OF TERMINATION Sec. 822.005 [32.005]. WITHDRAWAL OF CONTRIBUTIONS Sec. 822.006 [32.006]. RESUMPTION OF MEMBERSHIP AFTER TERMINATION

[Sections 822.007–822.200 [32.007–32.100] reserved for expansion]

## SUBCHAPTER B [G]. MEMBER COMPENSATION SUBJECT TO CONTRIBUTIONS AND CREDIT

## Sec. 822.201 [32.201]. MEMBER COMPENSATION

## CHAPTER 822 [32]. MEMBERSHIP

## SUBCHAPTER A. MEMBERSHIP

Sec. 822.001 [32.001]. MEMBERSHIP REQUIREMENT. (a) Membership in the retirement system includes:

- (1) all persons who were members of the retirement system on the day before the effective date of this subtitle; and
- (2) all employees of the public school system.

(b) Membership in the retirement system is a condition of employment for employees of the public school system unless an employee is excluded from membership under Section 822.002 [32.002 of this subtitle].

Sec. 822.002 [32.002]. EXCEPTIONS TO MEMBERSHIP REQUIREMENT. (a) An employee of the public school system is not permitted to be a member of the retirement system if the employee:

- (1) executed and filed a waiver of membership prior to the effective date of this subtitle and has not elected membership pursuant to Subsection (b) [of this section];
- (2) is eligible and elects to participate in the optional retirement program under Chapter 830 [36 of this subtitle];
- (3) is solely employed by a public institution of higher education that as a condition of employment requires the employee to be enrolled as a student in the institution;
- (4) is solely employed as a noncertified instructor in a program described in Subchapter G, Chapter 13, Education Code; or
- (5) has retired under the retirement system and has not been reinstated to membership pursuant to Section 823.502, 824.005, or 824.307 [33.502, 34.005, or 34.307 of this subtitle].

(b) An employee under Subsection (a)(1) [of this section] may become a member of the retirement system at the beginning of a school year, but the employee will not be entitled to credit for waived service unless payment for the waived service is made under Section 823.202 [33.202 of this subtitle].

Sec. 822.003 [32.003]. TERMINATION OF MEMBERSHIP. (a) A person terminates membership in the retirement system by:

- (1) death;
- (2) retirement;
- (3) withdrawal of all of the person's contributions while the person is absent from service; or
- (4) absence from service for more than five consecutive years within a six-year period.

(b) If a person, regardless of age, has 10 or more years of service credit, absence from service does not terminate membership in the retirement system unless all of the person's contributions are withdrawn.

(c) A person is not absent from service if the person:

- (1) is performing military service creditable in the retirement system; or
- (2) is on leave of absence from employment in a public school.

Sec. ~~822.004~~ [32.004]. EFFECT OF TERMINATION. If a person terminates membership in the retirement system under Section ~~822.003(a)(3) or (a)(4)~~ [32.003(a)(3) or 32.003(a)(4) of this subtitle], the retirement system shall cancel all of the person's service credit in the retirement system.

Sec. ~~822.005~~ [32.005]. WITHDRAWAL OF CONTRIBUTIONS. (a) A person who is absent from service except by death or retirement may withdraw all of the accumulated contributions credited to the person in the member savings account.

(b) An application to withdraw contributions under this section must be in writing and on a form prescribed by the board of trustees.

(c) A person is not entitled to withdraw contributions who has applied for employment, or has received a promise of employment, in a position covered by the retirement system.

Sec. ~~822.006~~ [32.006]. RESUMPTION OF MEMBERSHIP AFTER TERMINATION. A person whose membership in the retirement system has been terminated and who resumes membership must enter the retirement system on the same terms as a person entering service for the first time and is not entitled to credit for previous or other terminated service unless it is reinstated under Section ~~823.501~~ [33.501] or ~~823.502~~ [33.502 of this subtitle].

[Sections ~~822.007–822.200~~ [32.007–32.100] reserved for expansion]

#### SUBCHAPTER B [C]. MEMBER COMPENSATION SUBJECT TO CONTRIBUTIONS AND CREDIT

Sec. ~~822.201~~ [32.201]. MEMBER COMPENSATION. (a) Unless otherwise provided by this subtitle, compensation subject to report and deduction for member contributions and to credit in benefit computations is:

(1) beginning with the 1981–82 school year, only a member's salary and wages for service, less any amounts excluded by rules of the board of trustees adopted pursuant to Section ~~825.110~~ [35.110 of this subtitle]; and

(2) in school years before the 1981–82 school year, all compensation for service that was or should have been reported under laws and rules governing the retirement system when the compensation was paid but excluding compensation greater than \$25,000 for a school year beginning after August 31, 1969, but before September 1, 1979, and compensation greater than \$8,400 for a school year beginning before September 1, 1969.

(b) "Salary and wages" as used in Subsection (a) [of this section] means:

(1) normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed;

(2) career ladder payments of money authorized by Section 16.057, Education Code;

(3) amounts by which the member's salary is reduced under a salary reduction agreement authorized by Article 6252–3d, Revised Statutes; and

(4) amounts that would otherwise qualify as salary and wages under Subdivision (1) or (2) [of this subsection] but are not received directly by the member pursuant to a good faith, voluntary written salary reduction agreement in order to finance payments to a deferred compensation or tax sheltered annuity program specifically authorized by state law or to finance benefit options under a cafeteria plan qualifying under Section 125 of the [United States] Internal Revenue Code of 1986 (26 U.S.C. Section 125), if:

(A) the program or benefit options are made available to all employees of the employer; and

(B) the benefit options in the cafeteria plan are limited to one or more options that provide deferred compensation, group health and disability insurance, group term life insurance, dependent care assistance programs, or group legal services plans.

(c) Excluded from salary and wages are expense payments, allowances, payments for unused vacation or sick leave, maintenance or other nonmonetary compensation, fringe benefits, deferred compensation other than as provided *by* ~~[in]~~ Subsection (b)(3) ~~[of this section]~~, compensation that is not made pursuant to a valid employment agreement, and any compensation not described in Subsection (b) ~~[of this section]~~.

CHAPTER 823 [33]. CREDITABLE SERVICE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 823.001 [33.001]. TYPES OF CREDITABLE SERVICE

Sec. 823.002 [33.002]. SERVICE CREDITABLE IN A YEAR

Sec. 823.003 [33.003]. BENEFITS BASED ON SERVICE CREDIT

[Sections 823.004–823.100 [33.004–33.100] reserved for expansion]

SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE

Sec. 823.101 [33.101]. CREDITABLE PRIOR SERVICE

Sec. 823.102 [33.102]. STATEMENT OF PRIOR SERVICE

Sec. 823.103 [33.103]. PRIOR SERVICE CREDIT

Sec. 823.104 [33.104]. RESTORATION OF CERTIFICATE FOR PRIOR SERVICE EXCLUDED BECAUSE OF LATE INITIAL EMPLOYMENT

[Sections 823.105–823.200 [33.105–33.200] reserved for expansion]

SUBCHAPTER C. ESTABLISHMENT OF MEMBERSHIP SERVICE

Sec. 823.201 [33.201]. CURRENT MEMBERSHIP SERVICE

Sec. 823.202 [33.202]. MEMBERSHIP SERVICE PREVIOUSLY WAIVED

[Sections 823.203–823.300 [33.203–33.300] reserved for expansion]

SUBCHAPTER D. ESTABLISHMENT OF MILITARY SERVICE

Sec. 823.301 [33.301]. CREDITABLE MILITARY SERVICE

Sec. 823.302 [33.302]. MILITARY SERVICE CREDIT

Sec. 823.303 [33.303]. MILITARY LEAVE CREDIT

[Sections 823.304–823.400 [33.304–33.400] reserved for expansion]

SUBCHAPTER E. ESTABLISHMENT OF EQUIVALENT MEMBERSHIP SERVICE

Sec. 823.401 [33.401]. OUT-OF-STATE SERVICE

Sec. 823.402 [33.402]. DEVELOPMENTAL LEAVE

Sec. 823.403 [33.403]. UNIVERSITY COMPONENT SERVICE

Sec. 823.404 [33.404]. CERTAIN MENTAL HEALTH AND MENTAL RETARDATION SERVICE

[Sections 823.405–823.500 [33.405–33.500] reserved for expansion]

SUBCHAPTER F. REINSTATEMENT OF SERVICE CREDIT

Sec. 823.501 [33.501]. CREDIT CANCELED BY MEMBERSHIP TERMINATION

Sec. 823.502 [33.502]. CREDIT OF RETIREE

CHAPTER 823 [33]. CREDITABLE SERVICE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 823.001 [33.001]. TYPES OF CREDITABLE SERVICE. The types of service creditable in the retirement system are:

- (1) prior service;
- (2) membership service;

- (3) military service; and
- (4) equivalent membership service.

Sec. ~~823.002~~ [33.002]. SERVICE CREDITABLE IN A YEAR. The board of trustees by rule shall determine how much service in any year is equivalent to one year of service credit, but in no case may all of a person's service in one school year be creditable as more than one year of service.

Sec. ~~823.003~~ [33.003]. BENEFITS BASED ON SERVICE CREDIT. Except as otherwise provided under the optional retirement program, years of service on which the amount of a benefit is based consist of the number of years of service credit to which a member is entitled.

[Sections ~~823.004–823.100~~ [33.004–33.100] reserved for expansion]

#### SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE

Sec. ~~823.101~~ [33.101]. CREDITABLE PRIOR SERVICE. Prior service creditable in the retirement system is:

- (1) service as an employee performed before:
  - (A) September 1, 1937, for a person who became a member of the retirement system or was eligible to become a member before September 1, 1949; or
  - (B) September 1, 1949, for a person who first became eligible to be a member of the retirement system after August 31, 1949; and
- (2) military service performed during World War I or before the first anniversary of the date that war ended.

Sec. ~~823.102~~ [33.102]. STATEMENT OF PRIOR SERVICE. (a) At the time a person becomes a member of the retirement system for the first time, the person shall file with the retirement system a detailed statement of all prior service claimed.

(b) If a member fails to file a statement as provided by Subsection (a) ~~[of this section]~~, has at least five years of membership service credit, and has no unpaid waived, withdrawn, or delinquent service, the member is entitled to and may file a statement claiming prior service.

(c) The board of trustees may adopt rules for the filing of statements of prior service.

Sec. ~~823.103~~ [33.103]. PRIOR SERVICE CREDIT. (a) As soon as practicable after a member files a statement of prior service as provided by Section ~~823.102~~ [33.102 ~~of this subtitle~~], the board of trustees shall:

- (1) verify the service claimed;
- (2) make necessary adjustments in the application;
- (3) grant one year of prior service credit for each year of prior service approved; and
- (4) notify the member of the amount of prior service credit granted.

(b) The board of trustees may adopt rules for the granting of prior service credit.

Sec. ~~823.104~~ [33.104]. RESTORATION OF CERTIFICATE FOR PRIOR SERVICE EXCLUDED BECAUSE OF LATE INITIAL EMPLOYMENT. A person required to become a member of the retirement system because of the repeal of the exception to required membership for persons first employed in public education at age 60 or older may obtain credit for service *performed* while not a member by depositing the member contributions and membership fees *that [which]* would otherwise have been deducted from the person's compensation for that service had the person been a member. *The deposits must be*, ~~if such deposits are~~ paid within one year *after* ~~[from]~~ the date the person first becomes a member of the retirement system. Persons not making payment of these amounts within one year may obtain credit for the service under ~~[Subsection (h) of]~~ Section ~~825.403(h)~~ [35.403 ~~of this subtitle~~] as if member contributions had been required at the time of the service. The board of trustees may adopt rules to implement this section.



[Sections ~~823.105–823.200~~ [~~33.105–33.200~~] reserved for expansion]

#### SUBCHAPTER C. ESTABLISHMENT OF MEMBERSHIP SERVICE

Sec. ~~823.201~~ [~~33.201~~]. **CURRENT MEMBERSHIP SERVICE.** (a) Membership service is credited in the retirement system for each year in which a member is an employee and for which the member renders sufficient service for credit under Section ~~823.002~~ [~~33.002 of this subtitle~~] and makes and maintains with the retirement system the deposits required by this subtitle or prior law.

(b) The board of trustees may adopt rules for the granting of membership service credit.

Sec. ~~823.202~~ [~~33.202~~]. **MEMBERSHIP SERVICE PREVIOUSLY WAIVED.** (a) An employee who has previously executed and filed a waiver of membership in the retirement system and who, after the waiver, becomes a member may establish membership service credit for service as an employee that would have been creditable as membership service when performed except for the waiver.

(b) A member may establish credit under this section by depositing with the retirement system for each year of service claimed an amount equal to:

(1) the contributions and membership fees that the person would have paid had the person been a member of the retirement system during that year; plus

(2) interest computed at an annual rate of five percent of the amount of each payment that would have been due had the person been a member, from the hypothetical payment due date to the date of deposit.

(c) The retirement system shall determine in each case the amount of money to be deposited by a member claiming credit under this section. The system may not provide benefits based on the claimed service until the determined amount has been fully paid.

[Sections ~~823.203–823.300~~ [~~33.203–33.300~~] reserved for expansion]

#### SUBCHAPTER D. ESTABLISHMENT OF MILITARY SERVICE

Sec. ~~823.301~~ [~~33.301~~]. **CREDITABLE MILITARY SERVICE.** (a) Except as provided by Section ~~823.101(2)~~ [~~33.101(2) of this subtitle~~], military service creditable in the retirement system is active federal duty in the armed forces of the United States, other than as a student at a service academy, that was performed:

(1) as a direct result of being inducted or of first enlisting for duty on a date when the federal government was actively inducting persons into the armed forces under federal draft laws;

(2) as a reservist or member of the national guard who was ordered to duty under the authority of federal law; or

(3) during a time when the federal government was actively inducting persons into the armed forces under federal draft laws.

(b) A member may not establish more than five years of service credit in the retirement system under this subchapter for military service.

(c) The board of trustees may adopt rules expanding the military service creditable in the retirement system in order to comply with the requirements of federal law.

(d) Military service that is terminated by sentence of a court-martial is not creditable under this section.

Sec. ~~823.302~~ [~~33.302~~]. **MILITARY SERVICE CREDIT.** (a) An eligible member may establish service credit in the retirement system for military service performed that is creditable as provided by Section ~~823.301~~ [~~33.301 of this subtitle~~].

(b) A member eligible to establish military service credit is one who has at least 10 years of service credit in the retirement system for actual service in public schools.

(c) A member may establish credit under this section by depositing with the retirement system for each year of military service claimed a contribution in an amount equal to:

(1) the member's contributions to the retirement system during the most recent full year of membership service that preceded the military service, if the military service was performed while the person was a member of the retirement system; or

(2) the member's contributions to the retirement system during the first full year of membership service, if the military service was performed before the person became a member of the retirement system.

(d) In addition to the contribution required by Subsection (c) ~~[of this section]~~, a member claiming credit for military service must pay a fee of eight percent, compounded annually, of the required contribution from the date of first eligibility to the date of deposit.

(e) After a member makes the deposits required by this section, the retirement system shall grant the member one year of military service credit for each year of military service approved.

Sec. ~~823.303~~ [33.303]. MILITARY LEAVE CREDIT. A member who performs military service creditable in the retirement system but who does not establish credit for the service by making the deposits required by Section ~~823.302~~ [33.302 ~~of this subtitle~~] is entitled to credit of a year for each year of military service performed. The credit is usable only in determining eligibility for, but not the amount of, benefits under Section ~~824.406~~ [34.406 ~~of this subtitle~~].

[Sections ~~823.304–823.400~~ [33.304–33.400] reserved for expansion]

#### SUBCHAPTER E. ESTABLISHMENT OF EQUIVALENT MEMBERSHIP SERVICE

Sec. ~~823.401~~ [33.401]. OUT-OF-STATE SERVICE. (a) Except as provided by Subsection (b) ~~[of this section]~~, an eligible member may establish equivalent membership service credit for employment with a public school system maintained wholly or partly by another state or territory of the United States or by the United States for children of its citizens.

(b) A member may not establish credit under this section for service performed for a public school while a member of the armed forces, for which service the member was compensated by the United States.

(c) A member eligible to establish credit under this section is one who has at least 10 years of service credit in the retirement system for actual service in public schools.

(d) A member may establish credit under this section by depositing with the retirement system for each year of service claimed a contribution computed at the rate of:

(1) 12 percent of the member's annual compensation during the first year of service as a member of the retirement system that is both after the service for which credit is sought and after September 1, 1956; or

(2) 12 percent of the member's annual compensation during the most recent year of service as a member that is after the service for which credit is sought, if the member has performed no service in Texas since September 1, 1956.

(e) In addition to the contribution required by Subsection (d) ~~[of this section]~~, a member claiming credit under this section must pay a fee of eight percent, compounded annually, of the required contribution from the date of first eligibility to the date of deposit. A deposit for at least one year of credit, including the fee, must be made with an initial application for credit, and all payments for service claimed under this section must be made before retirement.

(f) The amount of service credit a member may establish under this section may not exceed 10 years.

(g) After a member makes the deposits required by this section, the retirement system shall grant the member one year of equivalent membership service credit for each year of service approved. The retirement system may not use service credit granted under this section in computing a member's annual average compensation.

Sec. ~~823.402~~ [33.402]. DEVELOPMENTAL LEAVE. (a) An eligible member may establish equivalent membership service credit ~~for~~ developmental leave that is creditable in the retirement system.

(b) Developmental leave creditable in the retirement system is absence from membership service for a school year that is approved by the member's employer for study, research, travel, or another purpose designed, as determined by the employer, to improve the member's professional competence.

(c) A member eligible to establish credit under this section is one who:

- (1) has at least five years of service credit in the retirement system; and
- (2) is an employee of a public school at the time the credit is sought.

(d) On or before the date a member takes developmental leave, the member shall file with the retirement system a notice of intent to take developmental leave, and the member's employer shall file with the retirement system a certification that the leave meets the requirements of Subsection (b) [~~of this section~~].

(e) A member may establish credit under this section by depositing with the retirement system for each year of developmental leave claimed an amount equal to the sum of:

- (1) the rate of member contributions required during the member's most recent year of service that preceded the developmental leave, times the member's annual rate of compensation during that year; plus
- (2) the amount that the state would have contributed had the member performed membership service during the year of leave at the member's annual rate of compensation during the most recent year of service that preceded the leave; plus
- (3) any membership fees in effect during the year of leave.

(f) A member may not establish more than two years of equivalent membership service credit under this section.

(g) A member may not establish credit under this section after the end of the first creditable school year that begins after the developmental leave *has ended*. The retirement system may not use credit established under this section in computing service retirement benefits until the member has at least 10 years of service credit for actual service in public schools.

(h) If credit established under this section is not used in determining benefits, all deposits made under this section are refundable to the member or, if applicable, the member's beneficiary.

Sec. ~~823.403~~ [33.403]. UNIVERSITY COMPONENT SERVICE. (a) A member may establish equivalent membership service credit for employment with the following entities that was performed before the entities became components of The University of Texas System:

- (1) the Callier Center for Communication Disorders, now a part of The University of Texas at Dallas; or
- (2) the Houston Speech and Hearing Center, now a part of The University of Texas Health Science Center at Houston.

(b) A member may establish credit under this section by depositing with the retirement system for each year of service claimed an amount equal to the sum of:

- (1) 12 percent of the rate of the member's annual compensation during the first full 12 months of service as a member that is after the date the service for which credit is sought was performed; plus
- (2) a fee of five percent a year of the amount determined under Subdivision (1) [~~of this subsection~~] from the date the service for which credit is sought was performed to the date of deposit; plus
- (3) any membership fees that would have been paid had the service for which credit is sought been performed as a member of the retirement system.

(c) The retirement system shall use credit established under this section in determining eligibility for all benefits payable by the retirement system.

Sec. ~~829.404~~ [33.404]. CERTAIN MENTAL HEALTH AND MENTAL RETARDATION SERVICE. (a) Except as provided by Subsection (i) ~~[of this section]~~, the retirement system shall grant to each member eligible as provided by this section service credit in the retirement system for all service covered by credit in the Employees Retirement System of Texas for which deposits are maintained in an active member account, immediately before the person became a member of the retirement system.

(b) A member eligible to receive credit under this section is one who:

(1) was a member of the Employees Retirement System of Texas as an employee of the Texas Department of Mental Health and Mental Retardation on August 31, 1985, and on that date and on the date of termination with the department had normal duties requiring the person to provide educational services to school-age residents of state schools;

(2) became ~~[or becomes]~~ a member of this retirement system after August 31, 1985, and before September 2, 1988, as an employee of a school district;

(3) has normal duties requiring the member to provide educational services to school-age students;

(4) is not a retiree of the Employees Retirement System of Texas; and

(5) has no intervening employment between the member's previous employment by the Texas Department of Mental Health and Mental Retardation and the member's employment by a school district.

(c) The Texas Department of Mental Health and Mental Retardation shall certify the employees who may be eligible to receive credit under this section and shall provide copies of the certifications to the retirement system and the Employees Retirement System of Texas.

(d) Except as provided by Subsection (i) ~~[of this section]~~, as soon as practicable after receipt of a certification of eligibility under Subsection (c) ~~[of this section]~~, the Teacher Retirement System of Texas shall determine eligibility and notify the Employees Retirement System of Texas. On notification, the Employees Retirement System of Texas shall transfer to the retirement system:

(1) a statement of the certified person's credit in and compensation subject to contributions to the Employees Retirement System of Texas;

(2) the person's accumulated contributions; and

(3) an amount from the state accumulation account determined by the actuary of the Employees Retirement System of Texas to be the amount required neither to increase nor to diminish the period required to amortize the unfunded liability of that system.

(e) A transfer under Subsection (d) ~~[of this section]~~ cancels the service credit and terminates the membership in the Employees Retirement System of Texas of the person for whom the amounts are transferred.

(f) As soon as practicable after receipt of a transfer under Subsection (d) ~~[of this section]~~, the retirement system shall grant the member for whom the amounts were transferred the credit authorized by this section.

(g) Service for which credit is established under this section will be considered as if it were performed as a member of this retirement system and credit for the service may not be reestablished in the Employees Retirement System of Texas.

(h) The legislature may appropriate to the Teacher Retirement System of Texas amounts that are determined necessary to finance additional actuarial liabilities created by this section and not financed by the transfers provided by Subsection (d) ~~[of this section]~~.

(i) The retirement system may not grant the eligible member the credit authorized by this section if:

(1) the actuary for this retirement system determines that an amount proposed to be transferred under Subsection (d) ~~[of this section]~~, together with any appropriation made available as provided by Subsection (h) ~~[of this section]~~, is not sufficient to finance the actuarial liabilities that would be created by the transfer; or

(2) the actuary for the Employees Retirement System of Texas makes the determination provided by ~~[Subdivision (1) of Subsection (i) of]~~ Section 819.508(i)(1) ~~[29.508 of this title]~~.

[Sections 829.405–829.500 ~~[33.405–33.500]~~ reserved for expansion]

#### SUBCHAPTER F. REINSTATEMENT OF SERVICE CREDIT

Sec. 829.501 ~~[33.501]~~. CREDIT CANCELED BY MEMBERSHIP TERMINATION. (a) An eligible person who has terminated membership in the retirement system by withdrawal of contributions or absence from service may reinstate in the system the service credit canceled by the termination.

(b) A person eligible to reinstate service credit under this section is one who resumes membership in the retirement system and subsequently performs membership service for the shorter of the following periods:

(1) two consecutive years; or

(2) a continuous period equal in duration to the period from the date of termination to the date of resumption of membership.

(c) A member may reinstate credit under this section by depositing with the retirement system:

(1) the amount withdrawn or refunded; plus

(2) membership fees for the period that membership was terminated; plus

(3) a reinstatement fee of six percent, compounded annually, of the amount withdrawn or refunded from the date of withdrawal or refund to the date of redeposit.

(d) The retirement system shall determine in each case the amount of money to be deposited by a member reinstating service credit under this section. The system may not provide benefits based on the service until the determined amount has been fully paid.

Sec. 829.502 ~~[33.502]~~. CREDIT OF RETIREE. (a) An eligible person who has terminated membership in the retirement system by service retirement may:

(1) resume membership in the system;

(2) reestablish service credit in effect immediately before the date of retirement; and

(3) establish credit for service performed since the date of retirement that would have been creditable had the person been a member of the retirement system.

(b) A person eligible to resume membership and reestablish and establish credit under this section is one who for two consecutive years after the date of retirement performs service that would be creditable if the person were a member of the retirement system.

(c) A person may resume membership and claim credit under this section by depositing with the retirement system:

(1) an amount equal to service retirement benefits received; plus

(2) a reinstatement fee of six percent, compounded annually, of the amount determined under Subdivision (1) ~~[of this subsection]~~ from the date of the person's return to service to the date of redeposit; plus

(3) an amount equal to the total contributions that would have been deducted from the person's annual compensation each year after the return to service had the person been a member of the retirement system; plus

(4) a reinstatement fee of six percent, compounded annually, of the amount determined under Subdivision (3) ~~[of this subsection]~~ from the end of each year of service after the return to service to the date of deposit; plus

(5) membership fees for the years after the return to service.

(d) The retirement system shall determine in each case the amount of money to be deposited by a person claiming credit under this section. On payment in full of the amount required by this section, the person becomes a member of the retirement system,

and the system shall grant the member credit for each year of service performed before or after the member's initial retirement.

## CHAPTER 824 [34]. BENEFITS

## SUBCHAPTER A. GENERAL PROVISIONS

## Sec. 824.001 [34.001]. TYPES OF BENEFITS

## Sec. 824.002 [34.002]. EFFECTIVE DATE OF RETIREMENT

## Sec. 824.003 [34.003]. WHEN BENEFITS ARE PAYABLE

## Sec. 824.004 [34.004]. WAIVER OF BENEFITS

## Sec. 824.005 [34.005]. REVOCATION OF RETIREMENT

[Sections 824.006–824.100 [34.006–34.100] reserved for expansion]

## SUBCHAPTER B. BENEFICIARIES

## Sec. 824.101 [34.101]. DESIGNATION OF BENEFICIARY

## Sec. 824.102 [34.102]. TRUST AS BENEFICIARY

## Sec. 824.103 [34.103]. ABSENCE OF BENEFICIARY

## Sec. 824.104 [34.104]. FAILURE OF BENEFICIARY TO CLAIM BENEFITS

Sec. 824.105 [34.105]. BENEFICIARY CAUSING DEATH OF  
MEMBER OR ANNUITANT

## Sec. 824.106 [34.106]. SIMULTANEOUS DEATH OF MEMBER AND BENEFICIARY

[Sections 824.107–824.200 [34.107–34.200] reserved for expansion]

## SUBCHAPTER C. SERVICE RETIREMENT BENEFITS

## Sec. 824.201 [34.201]. APPLICATION FOR SERVICE RETIREMENT BENEFITS

## Sec. 824.202 [34.202]. ELIGIBILITY FOR SERVICE RETIREMENT

## Sec. 824.203 [34.203]. STANDARD SERVICE RETIREMENT BENEFITS

## Sec. 824.204 [34.204]. OPTIONAL SERVICE RETIREMENT BENEFITS

## Sec. 824.205 [34.205]. DEDUCTIONS FROM SERVICE RETIREMENT ANNUITY

[Sections 824.206–824.300 [34.206–34.300] reserved for expansion]

## SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS

## Sec. 824.301 [34.301]. APPLICATION FOR DISABILITY RETIREMENT BENEFITS

## Sec. 824.302 [34.302]. ELIGIBILITY FOR DISABILITY RETIREMENT

## Sec. 824.303 [34.303]. CERTIFICATION OF DISABILITY

## Sec. 824.304 [34.304]. DISABILITY RETIREMENT BENEFITS

## Sec. 824.305 [34.305]. MEDICAL EXAMINATION OF DISABILITY RETIREE

## Sec. 824.306 [34.306]. REPORT OF EARNINGS OF DISABILITY RETIREE

Sec. 824.307 [34.307]. RESTORATION OF DISABILITY  
RETIREE TO MEMBERSHIP

[Sections 824.308–824.400 [34.308–34.400] reserved for expansion]

## SUBCHAPTER E. MEMBER DEATH BENEFITS

## Sec. 824.401 [34.401]. AVAILABILITY OF ANNUITY

## Sec. 824.402 [34.402]. BENEFITS ON DEATH OF ACTIVE MEMBER

## Sec. 824.403 [34.403]. BENEFITS ON DEATH OF INACTIVE MEMBER

## Sec. 824.404 [34.404]. SURVIVOR BENEFITS

Sec. 824.405 [34.405]. TABLES FOR DETERMINATION OF  
DEATH BENEFIT ANNUITY

Sec. ~~824.406~~ [34.406]. BENEFITS FOR SURVIVORS OF CERTAIN MEMBERS

Sec. ~~824.407~~ [34.407]. GUARANTEED RETURN OF AMOUNT  
EQUAL TO CONTRIBUTIONS

[Sections ~~824.408-824.500~~ [34.408-34.500] reserved for expansion]

SUBCHAPTER F. RETIREE DEATH BENEFITS

Sec. ~~824.501~~ [34.501]. SURVIVOR BENEFITS

Sec. ~~824.502~~ [34.502]. BENEFITS ON DEATH OF DISABILITY RETIREE

Sec. ~~824.503~~ [34.503]. RETURN OF EXCESS CONTRIBUTIONS

Sec. ~~824.504~~ [34.504]. BENEFITS FOR SURVIVORS OF CERTAIN RETIREES

[Sections ~~824.505-824.600~~ [34.505-34.600] reserved for expansion]

SUBCHAPTER G. LOSS OF BENEFITS ~~ON~~ [UPON] RESUMPTION OF SERVICE

Sec. ~~824.601~~ [34.601]. LOSS OF MONTHLY BENEFITS

Sec. ~~824.602~~ [34.602]. EXCEPTIONS

Sec. ~~824.603~~ [34.603]. EXCLUSION FROM CREDIT

CHAPTER ~~824~~ [34]. BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. ~~824.001~~ [34.001]. TYPES OF BENEFITS. The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) disability retirement benefits; and
- (3) death benefits.

Sec. ~~824.002~~ [34.002]. EFFECTIVE DATE OF RETIREMENT. (a) The effective date of a member's service retirement is the last day of the later of the following months:

- (1) the month in which the member applies for retirement as provided by Section ~~824.201~~ [34.201 ~~of this subtitle~~];
- (2) the month in which the member satisfies age and service requirements for service retirement as provided by Section ~~824.202~~ [34.202 ~~of this subtitle~~]; or
- (3) the month in which the member's employment in a position included in the coverage of the retirement system ends.

(b) The effective date of a member's disability retirement is the last day of the later of the following months:

- (1) the month in which the member applies for retirement as provided by Section ~~824.301~~ [34.301 ~~of this subtitle~~]; or
- (2) the month in which the member's employment in a position included in the coverage of the retirement system ends.

(c) For the purposes of this section, a member's employment in a position covered by the retirement system does not end if the member is on leave of absence or has a contract for future employment in a public school, other than a contract for employment that would, if the retiring member and the employer were to comply with all procedural requirements, qualify under Section ~~824.602~~ [34.602 ~~of this subtitle~~] for an exception to the loss of monthly benefits required by Section ~~824.601~~ [34.601 ~~of this subtitle~~].

(d) A person who works not later than June 15 of a year in order to complete all work required for the school year may be considered to have ended employment on May 31 of that year for the purposes of [Subdivision (3) of] Subsection (a)(3) [of this section].



Sec. ~~824.003~~ [34.003]. WHEN BENEFITS ARE PAYABLE. Except as otherwise provided by this chapter, an annuity provided by this chapter is not payable for the month in which the person who receives the annuity dies.

Sec. ~~824.004~~ [34.004]. WAIVER OF BENEFITS. (a) A person may, on a form prescribed by and filed with the retirement system, waive all or a portion of any benefits from the retirement system to which the person is entitled. A person may revoke a waiver of benefits in the same manner as the original waiver was made.

(b) A revocable waiver may be revoked only as to benefits payable after the date the revocation is filed. If a waiver is made irrevocable and is filed with the retirement system before the first benefit payment is made to the person executing the waiver, Section ~~824.103~~ [34.103 ~~of this subtitle~~] applies to determine alternative beneficiaries.

(c) The retirement system shall transfer to the state contribution account from the appropriate benefit reserve accounts amounts not used to pay benefits because of a waiver executed under this section.

(d) The board of trustees may provide rules for administration of waivers under this section.

Sec. ~~824.005~~ [34.005]. REVOCATION OF RETIREMENT. (a) A person who has retired under the retirement system may revoke that retirement by filing with the system a written revocation in a form prescribed by the system. For a revocation to be effective, the retirement system must receive the written revocation before the 46th day after the original date of retirement, and the person must return to the system an amount equal to the amount of benefits received under the original retirement. The period for revocation of a disability retirement under this subsection *begins on* ~~[shall begin with]~~ the date the medical board certifies the disability if *the* ~~[such]~~ date is later than the date of retirement.

(b) A person who has retired under the retirement system revokes that retirement if the person becomes employed in any position in a public school during the first month following that person's effective date of retirement, or during the first two months following an effective date of retirement established by reliance on ~~[Subsection (d) of]~~ Section ~~824.002(d)~~ [34.002 ~~of this subtitle~~], and must return any retirement benefits received under the original retirement.

(c) A person who revokes a retirement under this section is restored to membership in the retirement system as if that person had never retired.

[Sections ~~824.006–824.100~~ [34.006–34.100] reserved for expansion]

#### SUBCHAPTER B. BENEFICIARIES

Sec. ~~824.101~~ [34.101]. DESIGNATION OF BENEFICIARY. (a) Except as provided by Subsection (c) ~~[of this section]~~, any member or annuitant may, on a form prescribed by and filed with the retirement system, designate one or more beneficiaries to receive benefits payable by the retirement system on the death of the member or annuitant.

(b) Except as provided by Subsection (c) ~~[of this section]~~, a member or annuitant may change or revoke a designation of beneficiary in the same manner as the original designation was made.

(c) Only one person may be designated as beneficiary of an optional retirement annuity under Section ~~824.204(c)(1) or (c)(2)~~ [34.204(e)(1) ~~or Section 34.204(e)(2) of this subtitle~~], and a designation of beneficiary under either of those options may not be made, changed, or revoked after the date of the member's retirement.

(d) Unless a contrary intention is clearly indicated by a written designation of beneficiary and except as otherwise provided by law, the most recent designation of beneficiary by a member or annuitant applies to all benefits payable on the death of the member or annuitant.

(e) The retirement system by rule may provide for the designation of alternate beneficiaries.

Sec. 824.102 ~~[34.102]~~. TRUST AS BENEFICIARY. (a) Except as provided by Subsection (b) ~~[of this section]~~, a member or annuitant may designate a trust as beneficiary for the payment of benefits from the retirement system. If a trust is designated beneficiary, the beneficiary of the trust is considered the designated beneficiary for the purposes of determining eligibility for and the amount and duration of benefits. The trustee is entitled to exercise any rights to elect benefit options and name subsequent beneficiaries.

(b) A trust having more than one beneficiary may not receive benefits to which multiple designated beneficiaries are not entitled under this chapter.

Sec. 824.103 ~~[34.103]~~. ABSENCE OF BENEFICIARY. (a) Benefits payable on the death of a member or annuitant, except an optional retirement annuity under Section 824.204(c)(1) or (c)(2) ~~[34.204(c)(1) or 34.204(c)(2) of this subtitle]~~, are payable, and rights to elect survivor benefits, if applicable, are available, to one of the classes of persons described in Subsection (b) ~~[of this section]~~, if:

- (1) the member or annuitant fails to designate a beneficiary before death;
- (2) a designated beneficiary does not survive the member or annuitant; or
- (3) a designated beneficiary, under Section 824.004 ~~[34.004 of this subtitle]~~, waives claims to benefits payable on the death of the member or annuitant.

(b) The following classes of persons, in descending order of precedence, are eligible to receive benefits in a situation described in Subsection (a) ~~[of this section]~~:

- (1) any surviving joint designated beneficiaries;
- (2) any alternate beneficiaries;
- (3) the surviving spouse of the decedent;
- (4) any children of the decedent or their descendants by representation;
- (5) the parents of the decedent;
- (6) the executor or administrator of the decedent's estate; or
- (7) the persons entitled by law to distribution of the decedent's estate.

Sec. 824.104 ~~[34.104]~~. FAILURE OF BENEFICIARY TO CLAIM BENEFITS. (a) If, before the first anniversary of the death of a member or annuitant, the retirement system does not receive a claim for payment of benefits from a designated beneficiary or a person entitled to benefits under Section 824.103 ~~[34.103 of this subtitle]~~, the retirement system may pay benefits, except an optional retirement annuity under Section 824.204(c)(1) or (c)(2) ~~[34.204(c)(1) or Section 34.204(c)(2) of this subtitle]~~, under the order of precedence in Section 824.103(b) ~~[34.103(b) of this subtitle]~~, as if the person failing to claim benefits had predeceased the decedent.

(b) Payment under Subsection (a) ~~[of this section]~~ bars recovery by any other person of the benefits distributed.

(c) If, before the fourth anniversary of the death of a member or annuitant, payment of benefits based on the death has not been made and no claim for benefits is pending with the retirement system, the accumulated contributions of the deceased member or the balance of the reserve for the deceased annuitant is forfeited to the benefit of the retirement system. The retirement system shall transfer funds forfeited under this subsection to the state contribution account.

Sec. 824.105 ~~[34.105]~~. BENEFICIARY CAUSING DEATH OF MEMBER OR ANNUITANT. (a) A benefit payable on the death of a member or annuitant may not be paid to a person convicted of causing that death but instead is payable to a person who would be entitled to the benefit had the convicted person predeceased the decedent.

(b) A person who becomes eligible under this section to select death or survivor benefits may select benefits as if the person were the designated beneficiary.

(c) The retirement system shall reduce any annuity computed in part on the age of the convicted person to a lump sum equal to the present value of the remainder of the annuity. The reduced amount is payable to a person entitled as provided by this section to receive the benefit.

(d) The retirement system is not required to pay benefits under this section unless it receives actual notice of the conviction of a beneficiary. However, the retirement system may delay payment of a benefit payable on the death of a member or annuitant pending the results of a criminal investigation and of legal proceedings relating to the cause of death.

(e) For the purposes of this section, a person has been convicted of causing the death of a member or annuitant if the person:

(1) pleads guilty or nolo contendere to, or is found guilty by a court of, causing the death of the member or annuitant, regardless of whether sentence is imposed or probated; and

(2) has no appeal of the conviction pending and the time provided for appeal has expired.

Sec. 824.106 [34.106]. **SIMULTANEOUS DEATH OF MEMBER AND BENEFICIARY.** When a member or annuitant and the beneficiary of the member or annuitant have died within a period of less than 120 hours, the member or annuitant *is considered* ~~[shall be deemed]~~ to have survived the beneficiary for the purpose of determining the rights to amounts payable under this subtitle *on* ~~[upon]~~ the death of the member or annuitant.

[Sections 824.107–824.200 [34.107–34.200] reserved for expansion]

### SUBCHAPTER C. SERVICE RETIREMENT BENEFITS

Sec. 824.201 [34.201]. **APPLICATION FOR SERVICE RETIREMENT BENEFITS.** (a) A member may apply for a service retirement annuity by filing a written application for retirement with the board of trustees.

(b) At any time before the effective date of retirement, a member may, by filing written notice with the board of trustees, revoke the member's application for retirement or make, revoke, or change a selection of an optional service retirement annuity available as provided by Section 824.204 ~~[34.204 of this subtitle]~~.

(c) Except as specifically provided *by* ~~[in]~~ this subtitle, a retiree may not revoke a retirement nor make, revoke, or change a selection of an optional service retirement annuity.

Sec. 824.202 [34.202]. **ELIGIBILITY FOR SERVICE RETIREMENT.** (a) A member is eligible to retire and receive a standard service retirement annuity if the member:

(1) is at least 65 years old and has at least 10 years of service credit in the retirement system; or

(2) is at least 60 years old and has at least 20 years of service credit in the retirement system.

(b) If a member is at least 55 years old and has at least 10 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under Subsection (a)(1) ~~[of this section]~~, to a percentage derived from the following table:

Age at Date of Retirement											
Years of Service at least 10 but less than 20	55	56	57	58	59	60	61	62	63	64	65
	47%	51%	55%	59%	63%	67%	73%	80%	87%	93%	100%

(c) If a member is at least 55 years old and has at least 20 years of service credit in the retirement system, the member is eligible to retire and receive a service retirement annuity reduced from the standard service retirement annuity available under Subsection (a)(2) ~~[of this section]~~, to a percentage derived from the following table:

Years of Service	Age at Date of Retirement					
	55	56	57	58	59	60
at least 20 but less than 25	70%	76%	82%	88%	94%	100%
at least 25 but less than 30	75%	80%	82%	88%	94%	100%
at least 30 but less than 31	80%	82%	84%	88%	94%	100%
at least 31 but less than 32	82%	84%	86%	88%	94%	100%
at least 32 but less than 33	84%	86%	88%	90%	94%	100%
at least 33 but less than 34	86%	88%	90%	92%	94%	100%
at least 34 but less than 35	88%	90%	92%	94%	96%	100%
at least 35 but less than 36	90%	92%	94%	96%	98%	100%
at least 36 but less than 37	92%	94%	96%	98%	100%	100%
at least 37 but less than 38	94%	96%	98%	100%	100%	100%
at least 38 but less than 39	96%	98%	100%	100%	100%	100%
at least 39 but less than 40	98%	100%	100%	100%	100%	100%
40 or more	100%	100%	100%	100%	100%	100%

(d) If a member has at least 30 years of service credit in the retirement system, the member is eligible to retire regardless of age and receive a reduced service retirement annuity consisting of a percentage of the standard service retirement annuity available under Subsection (a)(2) ~~[of this section]~~, derived from the table in Subsection (c) ~~[of this section]~~. The board of trustees shall extend the table in Subsection (c) ~~[of this section]~~ to ages earlier than 55 years by decreasing the percentages by two percent for each year of age under 55 years.

(e) The board of trustees may adopt tables for reduction of benefits for early retirement by each month of age, but the range of percentages in the tables within a year must be limited to the range provided between two years of age by this section.

(f) Except as provided by Section ~~823.403(c)~~ ~~[33.403(c) of this subtitle]~~ or the proportionate retirement program in Subtitle A ~~[B of this title]~~, a member is not eligible to receive service retirement benefits from the retirement system unless the member has at least 10 years of service credit in the retirement system for actual service in public schools.

Sec. ~~824.203~~ ~~[34.203]~~. STANDARD SERVICE RETIREMENT BENEFITS. (a) Except as provided by Subsections (c) and (d) ~~[of this section]~~, the standard service retirement annuity is an amount computed on the basis of the member's average annual compensation for the three years of service, whether or not consecutive, in which the member received the highest annual compensation, times two percent for each year of service credit in the retirement system.

(b) In the case of a person who retired before August 27, 1979, ceilings in the definition of "annual compensation" apply to the computation of average annual compensation under Subsection (a) ~~[of this section]~~. In the case of a person who retires on or after that date, those ceilings do not apply and the computation shall be based on actual compensation paid or payable for services as an employee to the extent that the computation includes compensation for school years before the 1981-82 school year.

(c) Except as provided by Subsection (d) ~~[of this section]~~, for benefits payable because of the death or retirement of a member that occurred before September 1, 1982, the standard service retirement annuity is computed in accordance with applicable prior law.

(d) In no case may the standard service retirement annuity be less than \$6.50 a month for each year of service credit or, for a member who is at least 65 years old at the time of retirement, less than the greater of \$6.50 a month for each year of service credit, or \$75 a month. The minimum benefits provided by this section are subject to reduction in the same manner as other benefits because of early retirement or selection of an optional retirement annuity.

Sec. ~~824.204~~ ~~[34.204]~~. OPTIONAL SERVICE RETIREMENT BENEFITS. (a) Instead of the standard service retirement annuity payable under Section ~~824.203~~ ~~[34.203 of this subtitle]~~ or an annuity reduced because of age under Section ~~824.202~~ ~~[34.202 of this subtitle]~~, a retiring member may elect to receive an optional service retirement annuity, reduced for early retirement if applicable, under this section.

(b) An optional service retirement annuity is an annuity payable throughout the life of the retiree and is actuarially reduced from the annuity otherwise payable under this subtitle to its actuarial equivalent under the option selected under Subsection (c) ~~[of this section]~~.

(c) An eligible member may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable to and throughout the life of the person nominated by the retiree's written designation filed prior to retirement;

(2) after the retiree's death, one-half of the reduced annuity is payable to and throughout the life of the person nominated by the retiree's written designation filed prior to retirement;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the designated beneficiary; or

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the designated beneficiary.

Sec. ~~824.205~~ [34.205]. DEDUCTIONS FROM SERVICE RETIREMENT ANNUITY.

(a) A person who receives a service retirement annuity under Section ~~824.202, 824.203, or 824.204~~ [34.202, 34.203, or 34.204 of this subtitle] may, on a form satisfactory to and filed with the retirement system, authorize the retirement system to deduct from the person's monthly annuity payment the amount required as a monthly premium for:

(1) hospital insurance benefits provided to uninsured individuals not otherwise eligible for medical insurance for the aged, as provided by Part A of Title XVIII of the federal Social Security Act (~~[,]~~ 42 U.S.C. Section 1395c et seq.); and

(2) supplementary medical insurance benefits for the aged, as provided by Part B of Title XVIII of the federal Social Security Act (~~[,]~~ 42 U.S.C. Section 1395j et seq.).

(b) After making deductions authorized under Subsection (a) ~~[of this section]~~, the retirement system shall pay the required premiums to the treasury of the United States, subject to applicable laws relating to the time and manner of payment.

[Sections ~~824.206–824.300~~ [34.206–34.300] reserved for expansion]

#### SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS

Sec. ~~824.301~~ [34.301]. APPLICATION FOR DISABILITY RETIREMENT BENEFITS. (a) A member may apply for a disability retirement annuity by:

(1) filing a written application for retirement with the board of trustees; or

(2) having an application filed with the board by the member's legal representative.

(b) In addition to an application for retirement, a member shall file with the board of trustees the results of a medical examination of the member.

(c) The board of trustees by rule may require the submission to it of additional information about a disability. The retirement system shall prescribe forms for the information required by this section.

Sec. ~~824.302~~ [34.302]. ELIGIBILITY FOR DISABILITY RETIREMENT. A member is eligible to retire and receive a disability retirement annuity if the member:

(1) is certified by the medical board as disabled as provided by Section ~~824.303(b)~~ [34.303(b) of this subtitle]; and

(2) does not satisfy the age and service requirements under Section ~~824.202(a)~~ [34.202(a) of this subtitle] for a service retirement annuity without reduction.

Sec. ~~824.303~~ [34.303]. CERTIFICATION OF DISABILITY. (a) After a member applies for disability retirement, the medical board may require the member to submit additional information about the disability.

(b) If the medical board finds that the member is mentally or physically disabled from the further performance of duty and that the disability is probably permanent, the medical board shall certify disability, and the member shall be retired.

(c) The medical board may rule on an application for disability retirement at a regular or special meeting or by mail, telephone, telegraph, or other suitable means of communication.

Sec. ~~824.304~~ [34.304]. **DISABILITY RETIREMENT BENEFITS.** (a) If a member has a total of less than 10 years of service credit in the retirement system on the date of disability retirement, the retirement system shall pay the person a disability retirement annuity of \$50 a month for the shortest of the following periods:

- (1) the duration of the disability;
- (2) the number of months of creditable service the person has at retirement; or
- (3) the duration of the person's life.

(b) If a member has a total of at least 10 years of service credit in the retirement system on the date of disability retirement but is not eligible for service retirement without reduction of benefits, the retirement system shall pay the person for the duration of the disability a disability retirement annuity in an amount equal to the greater of:

- (1) a standard service retirement annuity computed on the basis of the amount of the person's service credit on the date of retirement; or
- (2) \$6.50 a month for each year of service credit on the date of retirement.

(c) If a person receives a disability retirement annuity under Subsection (b) [~~of this section~~] and the retirement begins after or continues until the person becomes 60 years old, the disability is conclusively presumed continuous for the rest of the person's life.

(d) Before the 31st day after the date on which the medical board certifies a member's disability, the member may reinstate withdrawn contributions and make deposits for service previously waived, military service, and equivalent membership service and receive service credit as provided by this subtitle.

Sec. ~~824.305~~ [34.305]. **MEDICAL EXAMINATION OF DISABILITY RETIREE.** (a) Once each year during the first five years after a member retires for disability, and once in each three-year period after that, the board of trustees may require a disability retiree who is less than 60 years old to undergo a medical examination by one or more physicians the board designates.

(b) If a disability retiree refuses to submit to a medical examination as provided by this section, the board of trustees shall discontinue the retiree's annuity payments until the retiree submits to an examination.

Sec. ~~824.306~~ [34.306]. **REPORT OF EARNINGS OF DISABILITY RETIREE.** (a) A disability retiree who is less than 60 years old annually shall submit a report of earnings to the retirement system. The retirement system shall examine each report and may require at any time that a disability retiree undergo a medical examination by one or more physicians the retirement system designates, if the retiree has reported earnings that the board of trustees considers excessive.

(b) The board of trustees may adopt rules establishing limits on the annual earnings of disability retirees and such other rules as are necessary to administer this section.

(c) If a disability retiree refuses to submit an annual report of earnings, the retirement system shall discontinue the retiree's annuity payment until the retiree submits to a medical examination by one or more physicians designated by the retirement system.

Sec. ~~824.307~~ [34.307]. **RESTORATION OF DISABILITY RETIREE TO MEMBERSHIP.** (a) If the medical board finds that a disability retiree who is less than 60 years old is no longer mentally or physically incapacitated for the performance of duty, it shall certify its findings and submit them to the board of trustees.

(b) If a disability retiree who is less than 60 years old is restored to active service or refuses for more than one year to submit to a required medical examination, or if the board of trustees concurs in a certification issued under Subsection (a) [~~of this section~~], the board shall discontinue the retiree's annuity payments and the retiree must again become a member of the retirement system.

(c) When a person becomes a member under this section, an amount equal to the sum in the person's individual account in the member savings account at the time of retirement,

minus the amount of annuity payments made since retirement, shall be transferred from the retired reserve account to the person's individual account in the member savings account. The member is entitled to service credit for all service credit used to compute the member's disability retirement annuity at the time of retirement.

[Sections 824.308–824.400 ~~[34.308–34.400]~~ reserved for expansion]

#### SUBCHAPTER E. MEMBER DEATH BENEFITS

Sec. 824.401 ~~[34.401]~~. AVAILABILITY OF ANNUITY. (a) A death benefit annuity under this chapter is payable only if the decedent had, at the time of death, at least the minimum amount of service credit in the retirement system necessary for a service retirement annuity at an attained age.

(b) Multiple beneficiaries are not eligible to receive a death benefit annuity under Section 824.402(a)(4) ~~[34.402(a)(4) of this subtitle]~~ or an equivalent annuity under Section 824.403 ~~[34.403 of this subtitle]~~.

Sec. 824.402 ~~[34.402]~~. BENEFITS ON DEATH OF ACTIVE MEMBER. (a) Except as provided by Section 824.401 ~~[34.401 of this subtitle]~~, the designated beneficiary of a member who dies during a school year in which the member has performed service is eligible to receive at the beneficiary's election the greatest of the following amounts:

(1) an amount equal to twice the member's annual compensation for the school year immediately preceding the school year in which the member dies, or \$60,000, whichever is less;

(2) an amount equal to twice the member's rate of annual compensation for the school year in which the member dies, or \$60,000, whichever is less;

(3) 60 monthly payments of a standard service retirement annuity, computed as provided by Section 824.203(a) ~~[34.203(a) of this subtitle]~~;

(4) an optional retirement annuity for the designated beneficiary's life in an amount computed as provided by Section 824.204(c)(1) ~~[34.204(c)(1) of this subtitle]~~ as if the member had retired on the last day of the month immediately preceding the month in which the member dies; or

(5) an amount equal to the amount of accumulated contributions in the member's individual account in the member savings account.

(b) The board of trustees by rule may prescribe the manner of payment of benefits under this section.

Sec. 824.403 ~~[34.403]~~. BENEFITS ON DEATH OF INACTIVE MEMBER. Except as provided by Section 824.401 ~~[34.401 of this subtitle]~~, the designated beneficiary of a member who dies while absent from service is eligible to receive:

(1) the same benefits payable under Section 824.402 ~~[34.402]~~ or 824.404 ~~[34.404 of this subtitle]~~ if the member's absence from service was:

(A) because of sickness, accident, or other cause the board of trustees determines involuntary;

(B) in furtherance of the objectives or welfare of the public school system; or

(C) during a time when the member was eligible to retire or would become eligible without further service before the fifth anniversary of the member's last day of service as a member; or

(2) an amount equal to the accumulated contributions in the member's individual account in the member savings account, if the member's absence from service does not satisfy a requirement of Subdivision (1) ~~[of this subsection]~~.

Sec. 824.404 ~~[34.404]~~. SURVIVOR BENEFITS. (a) The designated beneficiary of a member who dies may, if entitled to a death benefit other than the accumulated contributions of the member, elect to receive, instead of a benefit payable under Section 824.402 ~~[34.402]~~ or 824.403 ~~[34.403 of this subtitle]~~, a lump-sum payment of \$2,500 plus an applicable monthly benefit described in this section.

(b) If the designated beneficiary is the spouse or a dependent parent of the decedent, the beneficiary may elect to receive for life a monthly benefit of \$100, beginning immediately or on the date the beneficiary becomes 65 years old, whichever is later.

(c) If the designated beneficiary is the spouse of the decedent and has one or more children less than 18 years old or has custody of one or more children of the decedent who are less than 18 years old, the designated beneficiary may elect to receive:

(1) a monthly benefit of \$200 payable until the youngest child becomes 18 years old; and

(2) when the youngest child has attained the age of 18, a monthly benefit for life of \$100, beginning on the date the beneficiary becomes 65 years old.

(d) If the designated beneficiary or beneficiaries are the decedent's dependent children who are less than 18 years old, their guardian may elect to receive for them:

(1) a monthly benefit of \$200, payable as long as two or more children are less than 18 years old; and

(2) a monthly benefit of \$100, payable as long as only one child is less than 18 years old.

(e) If the designated beneficiary is the spouse or a dependent parent of the decedent, benefits under Subsection (d) ~~[of this section]~~ are payable, if a dependent child less than 18 years old exists, on the death of the beneficiary.

(f) A person who qualifies to receive survivor benefits from more than one deceased member as a spouse or a spouse with a dependent child is entitled to be paid only benefits based on the death of one of the decedents.

Sec. ~~824.405~~ [34.405]. TABLES FOR DETERMINATION OF DEATH BENEFIT ANNUITY. For the purpose of computing a death benefit annuity under Section ~~824.402(a)(4)~~ [34.402(a)(4)] or ~~824.403~~ [34.403 ~~of this subtitle~~], the board of trustees shall extend the tables:

(1) in Section ~~824.202(b)~~ [34.202(b) ~~of this subtitle~~] to ages earlier than 55 years by actuarially reducing the benefit available at the age of 55 years to the actuarial equivalent at the attained age of the beneficiary; and

(2) in Section ~~824.202(c)~~ [34.202(c) ~~of this subtitle~~] to ages earlier than the earliest retirement age by actuarially reducing the benefit available at the earliest retirement age to the actuarial equivalent at the attained age of the beneficiary.

Sec. ~~824.406~~ [34.406]. BENEFITS FOR SURVIVORS OF CERTAIN MEMBERS. (a) Except as provided by Subsection (c) ~~[of this section]~~, an eligible surviving spouse who is the designated beneficiary of a person who died before April 8, 1957, and who had at the time of death a total of at least 25 years of service credit and military leave credit in the retirement system, is eligible to receive an applicable survivor benefit available under Section ~~824.404~~ [34.404 ~~of this subtitle~~].

(b) A surviving spouse eligible under this section to receive a benefit is one who has not received from the retirement system a benefit based on the member's death, other than a return of the member's accumulated contributions.

(c) A surviving spouse who qualifies under this section for a survivor benefit is not eligible to receive a lump-sum benefit under Section ~~824.404(a)~~ [34.404(a) ~~of this subtitle~~].

(d) A benefit under this section is payable beginning on the last day of the month in which an eligible person applies for the benefit on a form prescribed by and filed with the retirement system.

Sec. ~~824.407~~ [34.407]. GUARANTEED RETURN OF AMOUNT EQUAL TO CONTRIBUTIONS. If a beneficiary selects a life annuity death benefit under Section ~~824.402~~ [34.402 ~~of this subtitle~~], the retirement system shall pay a lump-sum death benefit in an amount, if any, by which the amount of the deceased member's accumulated contributions at the time of death exceeds the amount of annuity payments made to the beneficiary before the beneficiary's death. This lump-sum benefit will be paid to the person designated by the beneficiary of the annuity or, if no person is designated, to the estate of the beneficiary.



[Sections ~~824.408–824.500~~ ~~[34.408–34.500]~~ reserved for expansion]

#### SUBCHAPTER F. RETIREE DEATH BENEFITS

Sec. ~~824.501~~ [34.501]. SURVIVOR BENEFITS. (a) The designated beneficiary of a retiree who dies while receiving a retirement benefit is eligible to receive a lump-sum survivor benefit under Section ~~824.404(a)~~ ~~[34.404(a) of this subtitle]~~ and any other applicable benefit available under that section.

(b) An eligible person may receive benefits under both this section and Section ~~824.204~~ ~~[34.204 of this subtitle]~~.

Sec. ~~824.502~~ [34.502]. BENEFITS ON DEATH OF DISABILITY RETIREE. The designated beneficiary of a disability retiree who dies while receiving a retirement benefit may elect to receive, instead of survivor benefits provided by Section ~~824.501~~ ~~[34.501 of this subtitle]~~, a benefit available under Section ~~824.402~~ ~~[34.402 of this subtitle]~~, computed as if the decedent had been in service at the time of death.

Sec. ~~824.503~~ [34.503]. RETURN OF EXCESS CONTRIBUTIONS. (a) If a retiree dies while receiving a standard or reduced service retirement annuity as provided by Section ~~824.202~~ ~~[34.202 of this subtitle]~~ or an optional service retirement annuity as provided by Section ~~824.204(c)(1) or (c)(2)~~ ~~[34.204(c)(1) or 34.204(c)(2) of this subtitle]~~ and, in the case of a retiree receiving an optional service retirement annuity, if the retiree's designated beneficiary of the annuity has predeceased the retiree, the retirement system shall pay a lump-sum death benefit in an amount, if any, by which the amount of the deceased retiree's accumulated contributions at the time of retirement exceeds the amount of annuity payments made before the retiree's death.

(b) A benefit under Subsection (a) ~~[of this section]~~ is payable to any existing designated beneficiary or, if none exists, in the manner provided by Section ~~824.103~~ ~~[34.103 of this subtitle]~~.

(c) If a retiree's designated beneficiary dies while receiving an optional annuity under Section ~~824.204(c)(1) or (c)(2)~~ ~~[34.204(c)(1) or 34.204(c)(2) of this subtitle]~~, the retirement system shall pay a lump-sum death benefit in an amount, if any, by which the amount of the retiree's accumulated contributions at the time of retirement exceeds the amount of annuity payments made to the retiree and the designated beneficiary before the beneficiary's death.

(d) A benefit under Subsection (c) ~~[of this section]~~ is payable to the persons entitled to distribution of the deceased beneficiary's estate.

(e) An eligible person may receive benefits under both this section and Section ~~824.501~~ ~~[34.501 of this subtitle]~~.

Sec. ~~824.504~~ [34.504]. BENEFITS FOR SURVIVORS OF CERTAIN RETIREES. (a) Except as provided by Subsection (b) ~~[of this section]~~, a surviving spouse who is the designated beneficiary of a retiree who did not perform a year of service after November 23, 1956, that was credited in the retirement system and who died before August 23, 1963, while receiving a retirement benefit, is eligible to receive an applicable survivor benefit available under Section ~~824.404~~ ~~[34.404 of this subtitle]~~.

(b) A surviving spouse who qualifies under this section for a survivor benefit is not eligible to receive a lump-sum benefit under Section ~~824.404(a)~~ ~~[34.404(a) of this subtitle]~~.

(c) A benefit under this section is payable beginning on the last day of the month in which an eligible person applies for the benefit on a form prescribed by and filed with the retirement system.

[Sections ~~824.505–824.600~~ reserved for expansion]

#### SUBCHAPTER G. LOSS OF BENEFITS ON [UPON] RESUMPTION OF SERVICE

Sec. ~~824.601~~ [34.601]. LOSS OF MONTHLY BENEFITS. Except as provided by Section ~~824.602~~ ~~[34.602 of this subtitle]~~, a retiree is not ~~[shall not be]~~ entitled to service or

disability retirement benefit payments, as applicable, for any month in which the retiree is employed in any position by a Texas public educational institution. A Texas public educational institution, for the purposes of this subchapter, is any entity included in the definition of "employer" or "public school" in Section 821.001 ~~[31.001 of this subtitle]~~ or any entity in whose employment the retiree has earned credit as a member of the retirement system. Loss of benefits under this section *does* ~~[shall]~~ not extend any period of guaranteed benefits elected pursuant to Section 824.204 ~~[34.204 of this subtitle]~~.

Sec. 824.602 ~~[34.602]~~. EXCEPTIONS. (a) The retirement system *may* ~~[shall]~~ not, under Section 824.601 ~~[34.601 of this subtitle]~~, withhold a monthly benefit payment if the retiree is employed in a Texas public educational institution:

(1) as a substitute only with pay not more than the daily rate of substitute pay established by the employer, *if the* ~~[provided that such]~~ employment has not exceeded a total of 120 days in the school year or, for a disability retiree, 90 days in the school year;

(2) in a position, other than as a substitute, on no more than a one-half time basis for the month; or

(3) in one or more positions on as much as a full-time basis, *if* ~~[provided that]~~:

(A) the work occurs in a school year that begins after the retiree's effective date of retirement;

(B) the work occurs in a period, designated by the retiree, of no more than five consecutive months between September and June~~[-inclusive,]~~ of the school year;

(C) the retiree executes on a form prescribed by the retirement system a written election to have this exception apply for the school year in determining whether benefits are to be suspended for employment after retirement;

(D) there is a prospective employer who endorses the retiree's election with a certification that the contemplated employment after retirement is in the best interests of the employer;

(E) the election form is executed on or before the retiree's last day of the first month of employment under the election during the school year; and

(F) the retiree has not been previously employed during the school year in a Texas public educational institution in a position described in *Subdivision* ~~[Paragraph]~~ (1) or (2) ~~[of this subsection]~~.

(b) Working as a substitute any portion of a day counts as working a full day for the purposes of ~~[Subdivision (1) of]~~ Subsection (a)(1) ~~[of this section]~~.

(c) A retiree who has elected to avoid loss of monthly benefits in a school year pursuant to ~~[Subdivision (3) of]~~ Subsection (a)(3) ~~[of this section]~~ is not eligible during that school year for any other exceptions to loss of benefits provided in this section.

(d) A retiree working as a substitute in a month is not eligible for an exception to a loss of benefits for that month pursuant to ~~[Subdivision (2) of]~~ Subsection (a)(2) ~~[of this section]~~ for that or any other employment in a public educational institution.

(e) The exceptions provided by *Subsections (a)(2) and (a)(3)* ~~[Subdivisions (2) and (3) of Subsection (a) of this section]~~ do not apply to disability retirees.

(f) ~~[Subsection (b) of]~~ Section 824.005(b), ~~[34.005 of this subtitle]~~ concerning revocation of retirement *on* ~~[upon]~~ certain reemployment, applies to employment described in Subsection (a) ~~[of this section]~~.

(g) The board of trustees shall adopt rules governing the employment of a substitute and defining "one-half time basis."

(h) The actuary designated by the board of trustees shall, in investigating the experience of the members of the system, note any significant increase in early age retirements and determine the extent to which any ~~[such]~~ increase has been caused by the exception to loss of benefits for employment after retirement provided by ~~[Subdivision (3) of]~~ Subsection (a)(3) ~~[of this section]~~. If the actuary certifies in writing to the retirement system that sound actuarial funding of the retirement system's benefits is endangered by continuation of this exception, the board of trustees may determine that no further

elections of the exception *will* ~~[shall]~~ be accepted from retirees, other than from those who have previously relied *on* ~~[upon]~~ the exception in retiring under this subtitle. A retiree may be considered to have relied *on* ~~[upon]~~ this exception only if retirement occurred on or after May 31, 1985, but before the date the board of trustees acknowledges receipt of such certification and if the retiree has first elected to receive benefits under the exception not later than two years after the retiree's effective date of retirement.

Sec. ~~824.603~~ [34.603]. EXCLUSION FROM CREDIT. Employment of a retiree described by ~~[Subsection (a) of] Section 824.602(a)~~ [34.602 of this subtitle] does not entitle a retiree to additional service credit, and the retiree so employed is not required to make contributions to the system from compensation for that employment. Such employment *may* ~~[shall]~~ not be considered in applying the provisions of Section ~~823.502~~ [33.502 of this subtitle].

CHAPTER 825 [35]. ADMINISTRATION

SUBCHAPTER A. BOARD OF TRUSTEES

Sec. 825.001 [35.001]. COMPOSITION OF BOARD OF TRUSTEES

Sec. 825.002 [35.002]. TRUSTEES APPOINTED BY GOVERNOR

Sec. 825.003 [35.003]. TRUSTEES APPOINTED BY BOARD OF EDUCATION

Sec. 825.004 [35.004]. TERMS OF OFFICE; FILLING VACANCIES

Sec. 825.005 [35.005]. OATH OF OFFICE

Sec. 825.006 [35.006]. APPLICATION OF SUNSET ACT

Sec. 825.007 [35.007]. COMPENSATION; EXPENSES

Sec. 825.008 [35.008]. VOTING

[Sections 825.009–825.100 [35.009–35.100] reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

Sec. 825.101 [35.101]. GENERAL ADMINISTRATION

Sec. 825.102 [35.102]. RULEMAKING

Sec. 825.103 [35.103]. ADMINISTERING SYSTEM ASSETS

Sec. 825.104 [35.104]. DESIGNATION OF AUTHORITY TO SIGN VOUCHERS

Sec. 825.105 [35.105]. ADOPTING RATES AND TABLES

Sec. 825.106 [35.106]. INTEREST RATE FOR BENEFIT  
INCREASE RESERVE ACCOUNT

Sec. 825.107 [35.107]. RECORDS OF BOARD OF TRUSTEES

Sec. 825.108 [35.108]. REPORT

• Sec. 825.109 [35.109]. CORRECTION OF ERRORS

Sec. 825.110 [35.110]. DETERMINATION OF ANNUAL COMPENSATION

[Sections 825.111–825.200 [35.111–35.200] reserved for expansion]

SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

Sec. 825.201 [35.201]. CHAIRMAN

Sec. 825.202 [35.202]. EXECUTIVE SECRETARY

Sec. 825.203 [35.203]. LEGAL ADVISOR

Sec. 825.204 [35.204]. MEDICAL BOARD

Sec. 825.205 [35.205]. OTHER PHYSICIANS

Sec. 825.206 [35.206]. ACTUARY

Sec. 825.207 [35.207]. STATE TREASURER

Sec. 825.208 [35.208]. COMPENSATION OF EMPLOYEES;  
PAYMENT OF EXPENSES

Sec. 825.209 [35.209]. SURETY BONDS

Sec. 825.210 [35.210]. INTEREST IN INVESTMENT PROFITS PROHIBITED

[Sections 825.211–825.300 [35.211–35.300] reserved for expansion]

SUBCHAPTER D. MANAGEMENT OF ASSETS

Sec. 825.301 [35.301]. INVESTMENT OF ASSETS

Sec. 825.302 [35.301]. INVESTMENT BY BANK IN SHORT-TERM SECURITIES

Sec. 825.303 [35.301]. LOAN OF SECURITIES BY BANK

Sec. 825.304 [35.3013]. NOMINEE TO HOLD SECURITIES

Sec. 825.305 [35.302]. AVAILABLE CASH

Sec. 825.306 [35.303]. CREDITING SYSTEM ASSETS

Sec. 825.307 [35.304]. MEMBER SAVINGS ACCOUNT

Sec. 825.308 [35.305]. STATE CONTRIBUTION ACCOUNT

Sec. 825.309 [35.306]. RETIRED RESERVE ACCOUNT

Sec. 825.310 [35.307]. BENEFIT INCREASE RESERVE ACCOUNT

Sec. 825.311 [35.308]. INTEREST ACCOUNT

Sec. 825.312 [35.309]. EXPENSE ACCOUNT

Sec. 825.313 [35.310]. TRANSFERS FROM INTEREST ACCOUNT

Sec. 825.314 [35.311]. USE OF STATE CONTRIBUTIONS

[Sections 825.315-825.400 [35.312-35.400] reserved for expansion]

#### SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS

Sec. 825.401 [35.401]. COLLECTION OF MEMBERSHIP FEES

Sec. 825.402 [35.402]. RATE OF MEMBER CONTRIBUTIONS

Sec. 825.403 [35.403]. COLLECTIONS OF MEMBER'S CONTRIBUTIONS

Sec. 825.404 [35.404]. COLLECTION OF STATE CONTRIBUTIONS

Sec. 825.405 [35.4041]. CONTRIBUTIONS BASED ON COMPENSATION  
ABOVE STATUTORY MINIMUM

Sec. 825.406 [35.405]. COLLECTION OF CONTRIBUTIONS FROM FEDERAL OR  
PRIVATE SOURCES; OFFENSE; PENALTY

Sec. 825.407 [35.4051]. COLLECTION OF CONTRIBUTIONS FROM  
NONEDUCATIONAL AND GENERAL FUNDS

Sec. 825.408 [35.406]. INTEREST ON CONTRIBUTIONS AND  
FEES; DEPOSITS IN TRUST

Sec. 825.409 [35.407]. EMPLOYER PICKUP OF MEMBER CONTRIBUTIONS

[Sections 825.410-825.500 [35.408-35.500] reserved for expansion]

#### SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

Sec. 825.501 [35.501]. STATEMENT OF AMOUNT IN INDIVIDUAL ACCOUNTS

Sec. 825.502 [35.502]. PAYMENT OF CONTRIBUTIONS TO A MEMBER  
ABSENT FROM SERVICE

Sec. 825.503 [35.503]. REPRODUCTION AND PRESERVATION OF RECORDS

Sec. 825.504 [35.504]. EMPLOYER CERTIFICATION TO BOARD

Sec. 825.505 [35.505]. AUDITS

Sec. 825.506 [35.506]. PLAN QUALIFICATION

### CHAPTER 825 [35]. ADMINISTRATION

#### SUBCHAPTER A. BOARD OF TRUSTEES

Sec. 825.001 [35.001]. COMPOSITION OF BOARD OF TRUSTEES. The board of  
trustees is composed of nine members.

Sec. 825.002 [35.002]. TRUSTEES APPOINTED BY GOVERNOR. (a) The governor shall appoint, with the advice and consent of the senate and as provided by this section, seven members of the board of trustees.

(b) The governor shall appoint three members of the board to hold office for staggered terms, with the term of one trustee expiring on August 31 of each odd-numbered year. Two of those three members must be persons who have demonstrated financial expertise, who have worked in private business or industry, and who have broad investment experience, preferably in investment of pension funds. None of the members appointed under this subsection may be a member or annuitant of the retirement system.

(c) The governor shall appoint two members of the board from a slate of three members of the retirement system who are currently employed by a public school district and who have been nominated in accordance with Subsection (f) ~~[of this section]~~ by the members of the retirement system whose most recent credited service was performed for a public school district. The two members hold office for staggered terms.

(d) The governor shall appoint one member of the board from a slate of three former members of the retirement system who have retired and are receiving benefits from the retirement system and who have been nominated in accordance with Subsections (f) and (g) ~~[of this section]~~ by the persons who have retired and are receiving benefits from the retirement system.

(e) The governor shall appoint one member from a slate of three members of the retirement system who are currently employed by an institution of higher education and who have been nominated in accordance with Subsection (f) ~~[of this section]~~ by the members of the retirement system whose most recent credited service was performed for an institution of higher education.

(f) Persons considered for nomination under Subsection (c), (d), or (e) ~~[of this section]~~ must have been nominated by written ballot at an election conducted under rules adopted by the board of trustees.

(g) To provide for the nomination of persons for appointment under Subsection (d) ~~[of this section]~~, the board shall send to each retiree of the retirement system:

- (1) notice of the deadline for filing as a candidate for nomination;
- (2) information on procedures to follow in filing as a candidate; and
- (3) a written ballot.

Sec. 825.003 [35.003]. TRUSTEES APPOINTED BY BOARD OF EDUCATION. The State Board of Education shall appoint two members of the board of trustees subject to confirmation by two-thirds of the senate.

Sec. 825.004 [35.004]. TERMS OF OFFICE; FILLING VACANCIES. (a) Members of the board of trustees hold office for terms of six years.

(b) A vacancy in the office of a trustee shall be filled for the unexpired term in the same manner that the office was previously filled.

Sec. 825.005 [35.005]. OATH OF OFFICE. Before taking office as a trustee, a person shall take the constitutional oath prescribed for officers of the state.

Sec. 825.006 [35.006]. APPLICATION OF SUNSET ACT. The board of trustees of the Teacher Retirement System of Texas is subject to the Texas Sunset Act ~~[(Chapter 325, Government Code)]~~, but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished September 1, 1991, and every 12th year after that date are reviewed.

Sec. 825.007 [35.007]. COMPENSATION; EXPENSES. Trustees serve without compensation but are entitled to reimbursement from the expense account of the retirement system for all necessary expenses that they incur in the performance of official board duties.

Sec. 825.008 [35.008]. VOTING. ~~[(a)]~~ Each trustee is entitled to one vote.

~~[(b) At any meeting of the board, a majority of the trustees is a quorum for the transaction of business.]~~

[Sections 825.009–825.100 [35.009–35.100] reserved for expansion]

#### SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

Sec. 825.101 [35.101]. GENERAL ADMINISTRATION. The board of trustees is responsible for the general administration and operation of the retirement system.

Sec. 825.102 [35.102]. RULEMAKING. Subject to the limitations of this subtitle, the board of trustees may adopt rules for:

- (1) eligibility for membership;
- (2) the administration of the funds of the retirement system; and
- (3) the transaction of business of the board.

Sec. 825.103 [35.103]. ADMINISTERING SYSTEM ASSETS. (a) The board of trustees is the trustee of all assets of the retirement system.

(b) The board may invest and reinvest the retirement system's assets as authorized by Article XVI, Section 67, of the Texas Constitution.

Sec. 825.104 [35.104]. DESIGNATION OF AUTHORITY TO SIGN VOUCHERS. (a) The board of trustees shall file with the comptroller of public accounts an attested copy of a board resolution that designates the persons authorized to sign vouchers for payment from accounts of the retirement system.

(b) A filed copy of the resolution required by Subsection (a) [of this section] evidences the comptroller's authority to issue warrants for payment from funds of the retirement system.

Sec. 825.105 [35.105]. ADOPTING RATES AND TABLES. The board of trustees shall adopt rates and mortality, service, and other tables the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality, service, and compensation experience of the system's members and beneficiaries.

Sec. 825.106 [35.106]. INTEREST RATE FOR BENEFIT INCREASE RESERVE ACCOUNT. After reviewing the recommendation of the actuary, the board of trustees shall approve a rate of interest that represents a reasonable anticipation of earnings from the investments of assets in the benefit increase reserve account.

Sec. 825.107 [35.107]. RECORDS OF BOARD OF TRUSTEES. (a) The board of trustees shall keep, in convenient form, data necessary for:

- (1) actuarial valuation of the accounts of the retirement system; and
- (2) checking the system's expenses.

(b) The board shall keep a record of all of its proceedings.

(c) Except as otherwise provided by this title, records of the board are open to public inspection.

Sec. 825.108 [35.108]. REPORT. Annually, the board of trustees shall publish a report containing the following information:

- (1) the retirement system's fiscal transactions for the preceding school year;
- (2) the amount of the system's accumulated cash and securities; and
- (3) the most recent balance sheet showing an actuarial valuation of the assets and liabilities of the system.

Sec. 825.109 [35.109]. CORRECTION OF ERRORS. If an error in the records of the retirement system results in a person's receiving more or less money than the person is entitled to receive under this subtitle, the board of trustees shall correct the error and so far as practicable shall adjust future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid.

Sec. 825.110 [35.110]. DETERMINATION OF ANNUAL COMPENSATION. The board of trustees shall adopt rules to exclude from annual compensation that part of salary and wages in the final years of a member's employment that reasonably can be

presumed to have been derived from a conversion of fringe benefits, maintenance, or other payments not includable in annual compensation to salary and wages. The board of trustees may adopt rules that include a percentage limitation on the amount of increases in annual compensation that may be subject to credit and deposit during a member's final years of employment.

[Sections 825.111–825.200 ~~[35.111–35.200]~~ reserved for expansion]

#### SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

Sec. 825.201 ~~[35.201]~~. CHAIRMAN. The board of trustees shall elect a chairman. The chairman must be a member of the board.

Sec. 825.202 ~~[35.202]~~. EXECUTIVE SECRETARY. (a) The board of trustees, by a majority vote of all members, shall appoint an executive secretary.

(b) The executive secretary may not be a member of the board of trustees.

(c) To be eligible to serve as the executive secretary, a person must have been a citizen of this state for the three years immediately preceding the appointment.

(d) The executive secretary shall recommend to the board actuarial and other services necessary to administer the retirement system.

(e) Annually, the executive secretary shall prepare an itemized expense budget for the following fiscal year and shall submit the budget to the board for review and adoption.

Sec. 825.203 ~~[35.203]~~. LEGAL ADVISER. The attorney general of the state is the legal adviser of the board of trustees. The attorney general shall represent the board in all litigation.

Sec. 825.204 ~~[35.204]~~. MEDICAL BOARD. (a) The board of trustees shall appoint a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in this state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

(1) review all medical examinations required by this subtitle;

(2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and

(3) report in writing to the board of trustees its conclusions and recommendations on all matters referred to it.

Sec. 825.205 ~~[35.205]~~. OTHER PHYSICIANS. The board of trustees may employ physicians in addition to the medical board to report on special cases.

Sec. 825.206 ~~[35.206]~~. ACTUARY. (a) The board of trustees shall designate an actuary as its technical adviser.

(b) At least once every five years the actuary, on authorization of the board of trustees, shall:

(1) investigate the mortality, service, and compensation experience of the members and beneficiaries of the retirement system;

(2) on the basis of the investigation made under Subdivision (1) ~~[of this subsection]~~, recommend to the board of trustees tables and rates that are required; and

(3) on the basis of tables and rates adopted by the board of trustees under Section 825.105 ~~[35.105 of this subtitle]~~, evaluate the assets and liabilities of the retirement system.

Sec. 825.207 ~~[35.207]~~. STATE TREASURER. (a) Except as provided by Section 825.302 or 825.303 ~~[35.3011 or 35.3012 of this subtitle]~~, the state treasurer is the custodian



of all securities and cash of the retirement system, including securities held in the name of a nominee of the retirement system.

(b) The state treasurer shall pay money from the accounts of the retirement system on warrants drawn by the comptroller of public accounts and authorized by vouchers signed by the executive secretary or other persons designated by the board of trustees.

(c) The state treasurer annually shall furnish to the board of trustees a sworn statement of the amount of the retirement system's assets in the treasurer's custody.

(d) The state treasurer is not responsible, under either civil or criminal law, for any action or losses with respect to assets of the retirement system while the assets are in the custody of a commercial bank as provided by Section *825.302 or 825.303* [~~35.3011 or 35.3012 of this subtitle~~].

Sec. *825.208* [~~35.208~~]. **COMPENSATION OF EMPLOYEES; PAYMENT OF EXPENSES.** The board of trustees shall approve the rate of compensation of all persons it employs and the amounts necessary for other expenses for operation of the retirement system. The rates and amounts may not exceed those paid for similar services for the state.

Sec. *825.209* [~~35.209~~]. **SURETY BONDS.** (a) The state treasurer shall give a surety bond in the amount of \$50,000.

(b) The executive secretary shall give a surety bond in the amount of \$25,000.

(c) The board of trustees may require any trustee or employee of the board, other than the executive secretary, to give a surety bond in an amount determined by the board.

(d) All surety bonds must be:

(1) made with a solvent surety company that is authorized to do business in the state;

(2) made payable to the board of trustees;

(3) approved by the board of trustees and the attorney general; and

(4) conditioned on the bonded person's faithful performance of all of the person's duties.

(e) The board of trustees shall pay from the expense account all expenses for the execution of a bond under this section, including premiums.

Sec. *825.210* [~~35.210~~]. **INTEREST IN INVESTMENT PROFITS PROHIBITED.** Except for an interest in the retirement assets as a member of the retirement system, a trustee or employee of the board of trustees may not have a direct or indirect interest in the gains from investments made with the system's assets and may not receive any compensation for service other than designated salary and authorized expenses.

[Sections *825.211–825.300* [~~35.211–35.300~~] reserved for expansion]

#### SUBCHAPTER D. MANAGEMENT OF ASSETS

Sec. *825.301* [~~35.301~~]. **INVESTMENT OF ASSETS.** (a) The board of trustees shall invest assets of the retirement system without distinction as to their source.

(b) The board of trustees may contract with private professional investment managers to assist the board in investing the assets of the retirement system.

(c) The board of trustees shall employ one or more performance measurement services to evaluate and analyze the investment results of those assets of the retirement system for which reliable and appropriate measurement methodology and procedures exist. Each service shall compare investment results with the written investment objectives developed by the board, and shall also compare the investment of the assets being evaluated and analyzed with the investment of other public funds.

(d) The board of trustees may invest assets of the retirement system in obligations issued, assumed, or guaranteed by the African Development Bank.

(e) The board of trustees shall develop written investment objectives concerning the investment of the assets of the retirement system. The objectives may address desired

rates of return, risks involved, investment time frames, and any other relevant considerations.

Sec. ~~825.302~~ [35.3011]. **INVESTMENT BY BANK IN SHORT-TERM SECURITIES.** The retirement system may contract with one or more commercial banks to serve as custodians of the system's cash or securities pending completion of an investment settlement and may authorize a bank acting as custodian to invest the cash so held in such short-term securities as the board of trustees determines.

Sec. ~~825.303~~ [35.3012]. **LOAN OF SECURITIES BY BANK.** (a) The retirement system may contract with one or more commercial banks to serve as custodians of the system's securities and to lend the securities under rules adopted by the board of trustees and as required by this section.

(b) To be eligible to lend securities under this section, a bank must:

- (1) be experienced in the operation of a fully secured securities loan program;
- (2) maintain adequate capital in the prudent judgment of the retirement system to assure the safety of the securities entrusted to it as a custodian;
- (3) execute an indemnification agreement satisfactory in form and content to the retirement system fully indemnifying the retirement system against loss resulting from the bank's service as custodian of the system's securities and its operation of a securities loan program for the system's securities;
- (4) require any securities broker or dealer to whom it lends securities belonging to the retirement system to deliver to and maintain with the bank collateral in the form of cash or United States government securities, in an amount equal to not less than 100 percent of the market value, from time to time, of the loaned securities; and
- (5) speedily collect and remit to the state treasurer on the day of collection by the fastest available means any dividends or interest collectible by it on securities held by it as custodian, together with identification of the source of the dividends or interest.

Sec. ~~825.304~~ [35.3013]. **NOMINEE TO HOLD SECURITIES.** (a) The retirement system may select a nominee to hold securities of the system in the name of the nominee, without mention of ownership by the retirement system in the stock certificate, bond certificate, stock registration book, or other evidence of title to the securities. If a nominee is selected under this section, the records and all relevant reports or accounts of the retirement system must show the ownership by the system of the securities held by the nominee and the facts regarding the system's holdings.

(b) A nominee selected under this section shall file with the retirement system a signed statement showing the system's ownership of the securities. A nominee also shall endorse any stock certificate in blank, execute an appropriate stock power in blank and attach it to the stock certificate, or execute a conveyance or assignment of the title to the securities, and promptly deposit it with the appropriate custodian.

(c) A nominee may not possess the securities and may have access to them only under the immediate supervision of the custodian of the securities.

(d) A nominee may be a partnership composed of either retirement system employees or members of the board of trustees, or both. The retirement system may contract with a partnership under this subsection without complying with statutory requirements for awarding contracts for services by state agencies, but the retirement system shall submit any proposed contract under this subsection to the attorney general for review in advance of execution to protect the total interests of the state and the retirement system. A partner who is also a retirement system employee or board member may accept no compensation or profits from the partnership and holds any profits of the partnership in trust for the retirement system. The retirement system may indemnify its employees or board members acting in their capacities as individual partners of the nominee and may purchase performance bonds for them. The retirement system also may pay expenses and provide facilities, services, supplies, and materials necessary to the functioning of the partnership as its nominee. Any expense reimbursements must be at the same rate that the partner incurring the expense would have received as an employee or board member.

Amounts may not be expended for office facilities for the partnership separate from those of the retirement system.

(e) The records of a nominee shall be maintained by the retirement system and are subject to audit by the state auditor.

Sec. 825.305 [35.302]. AVAILABLE CASH. The board of trustees may keep on deposit with the state treasurer available cash not exceeding 10 percent of the total assets of the retirement system, to pay annuity and other disbursements.

Sec. 825.306 [35.303]. CREDITING SYSTEM ASSETS. The assets of the retirement system shall be credited, according to the purpose for which they are held, to one of the following accounts:

- (1) member savings account;
- (2) state contribution account;
- (3) retired reserve account;
- (4) benefit increase reserve account;
- (5) interest account; or
- (6) expense account.

Sec. 825.307 [35.304]. MEMBER SAVINGS ACCOUNT. (a) The retirement system shall deposit in a member's individual account in the member savings account:

- (1) the amount of contributions to the retirement system that is deducted from the member's compensation;
- (2) the portion of a deposit made on or after resumption of membership that represents the amount of retirement benefits received;
- (3) the portion of a deposit to reinstate service credit previously canceled that represents the amount withdrawn or refunded;
- (4) the portion of a deposit to establish membership service credit previously waived that is required by Section 823.202(b)(1) [~~33.202(b)(1) of this subtitle~~];
- (5) the portion of a deposit to establish membership service credit for service performed after retirement that is required by Section 823.502(c)(3) or (c)(5) [~~33.502(c)(3) or 33.502(c)(5) of this subtitle~~];
- (6) the portion of a deposit to establish military service credit required by Section 823.302(c) [~~33.302(c) of this subtitle~~];
- (7) the portion of a deposit to establish equivalent membership service credit required by Section 823.401(d), 823.402(e)(1) or (e)(2), or 823.403(b)(1) or (b)(2) [~~33.401(d), 33.402(e)(1), 33.402(e)(2), 33.403(b)(1), or 33.403(b)(2) of this subtitle~~]; and
- (8) interest earned on money in the account as provided by Subsections (b) and (c) [~~of this section~~] and Section 825.313(b)(1) [~~35.310(b)(1) of this subtitle~~].

(b) Interest on a member's contribution is computed at the rate of five percent a year on the average balance in the account during the preceding fiscal year. The retirement system shall credit interest on August 31 of each year.

(c) Accumulated contributions in an individual's account on the date that the individual's membership in the retirement system is terminated do not earn interest after that date.

Sec. 825.308 [35.305]. STATE CONTRIBUTION ACCOUNT. The retirement system shall deposit in the state contribution account:

- (1) all state contributions to the retirement system required by Section 825.404 [~~35.404 of this subtitle~~];
- (2) amounts from the interest account as provided by Section 825.313(b)(5) [~~35.310(b)(5) of this subtitle~~];
- (3) retirement annuities waived or forfeited in accordance with Section 824.601 [~~34.601~~] or 824.004 [~~34.004 of this subtitle~~];
- (4) fees collected under Section 825.403(h) [~~35.403(h) of this subtitle~~];

(5) fees and interest for reinstatement of service credit or establishment of membership service credit as provided by Section ~~823.202, 823.501, or 823.502~~ [33.202, 33.501, or 33.502 of this subtitle];

(6) the portion of a deposit required by Section ~~823.302~~ [33.302 of this subtitle] to establish military service credit that represents a fee; and

(7) the portion of a deposit required by Section ~~823.401(e)~~ [33.401(e) of this subtitle] to establish out-of-state service credit that represents a fee.

Sec. ~~825.309~~ [35.306]. RETIRED RESERVE ACCOUNT. (a) The retirement system shall transfer to the retired reserve account:

(1) from the member savings account, an amount equal to the accumulated contributions in a member's individual account when the member retires or when the retirement system approves the payment of any benefit authorized under this subtitle on the member's retirement or death;

(2) from the state contribution account, an amount certified by the actuary or determined under actuarial tables adopted by the board of trustees pursuant to Section ~~825.105~~ [35.105 of this subtitle] as necessary to provide for the payment of the benefit as it becomes due; and

(3) from the interest account, the amount required by Section ~~825.313(b)(2)~~ [35.310(b)(2) of this subtitle].

(b) The retirement system shall use money in the retired reserve account to pay all retirement annuities and all death or survivor benefits except those paid under Section ~~825.310(b)~~ [35.307(b) of this subtitle].

Sec. ~~825.310~~ [35.307]. BENEFIT INCREASE RESERVE ACCOUNT. (a) The retirement system shall deposit in the benefit increase reserve account:

(1) money appropriated to pay postretirement benefit increases, or other adjustments of initial benefit payments, authorized by the legislature after January 30, 1975; and

(2) interest as required by Section ~~825.313(b)(4)~~ [35.310(b)(4) of this subtitle].

(b) The retirement system shall pay from the account postretirement benefit increases, and other adjustments of initial benefit payments, funded by the amounts deposited in the account pursuant to Subsection (a) [of this section].

Sec. ~~825.311~~ [35.308]. INTEREST ACCOUNT. In the interest account the retirement system shall:

(1) deposit all income, interest, and dividends from deposits and investments of assets of the retirement system; and

(2) accumulate net capital gains and losses from the sale, call, maturity, or conversion of securities.

Sec. ~~825.312~~ [35.309]. EXPENSE ACCOUNT. (a) The retirement system shall deposit in the expense account:

(1) all membership fees required by this subtitle; and

(2) money required to be deposited in the account by Section ~~825.313(b)(3) or 825.313(c)~~ [Sections 35.310(b)(3) and 35.310(c) of this subtitle].

(b) The retirement system shall pay from the account all expenses of administration and maintenance of the retirement system.

Sec. ~~825.313~~ [35.310]. TRANSFERS FROM INTEREST ACCOUNT. (a) Annually, the retirement system shall transfer from the interest account to the state contribution account amounts accumulated under Section ~~825.311(2)~~ [35.308(2) of this subtitle].

(b) On August 31 of each year, the retirement system shall make the following transfers from the interest account:

(1) to the member savings account, an amount computed using the rate prescribed by Section ~~825.307(b)~~ [35.304(b) of this subtitle];

(2) to the retired reserve account, an amount equal to  $\frac{3}{4}$  percent of the average balance of the retired reserve account for that fiscal year or, if the transfer is

authorized by resolution of the board, an amount computed at a greater rate if the actuary recommends the greater rate to adequately fund the retired reserve account;

(3) to the expense account, an amount designated by the board of trustees in accordance with Subsection (c) ~~[of this section]~~;

(4) to the benefit increase reserve account, an amount representing interest on the average annual balance of the benefit increase reserve account at a rate set by the board of trustees in accordance with Section 825.106 ~~[35.106 of this subtitle]~~; and

(5) to the state contribution account, the amount remaining in the interest account after the other transfers required by this section are made.

(c) The board of trustees, by resolution recorded in its minutes, shall transfer from the interest account to the expense account an amount necessary to cover the expenses of the retirement system for the fiscal year, including the expense of servicing mortgages insured by the Federal Housing Administration under the National Housing Act (12 U.S.C. Section ~~[U.S.C.A. Sec.]~~ 1701 et seq.).

Sec. 825.314 ~~[35.311]~~. USE OF STATE CONTRIBUTIONS. The retirement system shall use all assets contributed by the state to pay benefits authorized by this subtitle.

[Sections 825.315–825.400 ~~[35.312–35.400]~~ reserved for expansion]

#### SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS

Sec. 825.401 ~~[35.401]~~. COLLECTION OF MEMBERSHIP FEES. (a) Each member of the retirement system, with the first contribution to the member savings account in each fiscal year, shall pay a membership fee of \$10 to the board of trustees. The member shall pay the fee in the same manner as provided by Section 825.403 ~~[35.403 of this subtitle]~~ for the payment of the member's contributions to the member savings account.

(b) If a member does not currently hold a position included in the class of positions eligible for retirement system membership, the member shall pay the membership fee to the retirement system.

(c) If the membership fee is not paid, the board may deduct an amount equal to the fee from the member's first contribution of the year to the member savings account or from the member's accumulated contributions in that account before a refund is made.

(d) The retirement system shall deposit all membership fees in the expense account.

Sec. 825.402 ~~[35.402]~~. RATE OF MEMBER CONTRIBUTIONS. The rate of contributions for each member of the retirement system is:

(1) five percent of the member's annual compensation or \$180, whichever is less, for service rendered after August 31, 1937, and before September 1, 1957;

(2) six percent of the first \$8,400 of the member's annual compensation for service rendered after August 31, 1957, and before September 1, 1969;

(3) six percent of the member's annual compensation for service rendered after August 31, 1969, and before the first day of the 1977–78 school year;

(4) 6.65 percent of the member's annual compensation for service rendered after the last day of the period described by Subdivision (3) ~~[of this section]~~ and before September 1, 1985; and

(5) 6.4 percent of the member's annual compensation for service rendered after August 31, 1985.

Sec. 825.403 ~~[35.403]~~. COLLECTION OF MEMBER'S CONTRIBUTIONS. (a) Each payroll period, each employer shall deduct from the compensation of each member employed by the employer an amount equal to 6.4 percent of the member's compensation for that period.

(b) Each employer or the employer's designated disbursing officer, at a time and in a form prescribed by the retirement system, shall send to the executive secretary all deductions and a certification of earnings of each member employed by the employer.

(c) The executive secretary shall deposit with the state treasurer all deductions received by the executive secretary.

(d) After the deductions are deposited with the state treasurer, the money shall be used as provided by this subtitle.

(e) The county superintendent or ex officio county superintendent, in accordance with this section, shall collect contributions of members employed in common school or other school districts under the superintendent's jurisdiction.

(f) Employers shall make the deductions required by this section even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(g) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payment period.

(h) If deductions were previously required but not paid, the member shall pay the amount of those deductions plus a fee computed at a rate of five percent a year on the unpaid amount from the end of the school year in which the deductions first became due or the end of the 1974-75 school year, whichever is later, to the date of payment. The board of trustees shall:

(1) prescribe terms for payments under this subsection;

(2) credit the member for prior service to which the member is entitled under this subtitle; and

(3) deposit the fee required by this subsection in the state contribution account.

(i) Contributions required by Section 825.402 [~~35.402 of this subtitle~~] shall be deducted from the funds regularly appropriated by the state for the current maintenance of any educational institution supported in whole or part by the state and not otherwise covered by this section.

Sec. 825.404 [~~35.404~~]. COLLECTION OF STATE CONTRIBUTIONS. (a) During each fiscal year, the state shall contribute to the retirement system an amount equal to eight percent of the aggregate annual compensation of all members of the retirement system during that fiscal year.

(b) Before November 2 of each even-numbered year, the board of trustees shall certify to the comptroller of public accounts for review and adoption an estimate of the amount necessary to pay the state's contributions to the retirement system for the following biennium.

(c) The amount certified under Subsection (b) [~~of this section~~] shall be included in the state budget that the governor submits to the legislature.

(d) All money appropriated by the state to the retirement system shall be paid to the state contribution account in equal monthly installments as provided by Section 403.093 [~~Article 4364a, Revised Civil Statutes of Texas, 1925~~].

Sec. 825.405 [~~35.404~~]. CONTRIBUTIONS BASED ON COMPENSATION ABOVE STATUTORY MINIMUM. (a) For members entitled to the minimum salary for certain school personnel under Section 16.056, Education Code, the employing district shall pay the state's contribution on the portion of the member's salary that exceeds the statutory minimum.

(b) For purposes of this section, the statutory minimum salary is the salary provided by Section 16.056, Education Code, multiplied by the price differential index applicable under Section 16.102, Education Code, to the district in which the member is employed, plus any career ladder supplement under Section 16.057, Education Code.

(c) The employer's form showing deductions and certification of earnings must provide the retirement system with information sufficient to administer this section, as determined by the system, including information showing the applicable minimum salary as well as aggregate annual compensation.

(d) The employer must remit the amount required under this section to the executive secretary at the same time that the employer remits the member's contribution.

(e) After the end of each school year, the retirement system shall certify to the commissioner of education:

(1) the names of any employing districts that have failed to remit, within the period required by Section 825.408 ~~[35.406 of this subtitle]~~, all contributions required under this section for the school year; and

(2) the amounts of the unpaid contributions.

(f) If the commissioner of education receives a certification under Subsection (e) ~~[of this section]~~, the commissioner shall direct the comptroller of public accounts to withhold the amount certified, plus interest computed at the rate and in the manner provided by Section 825.408 ~~[35.406 of this subtitle]~~, from the first state money payable to the school district. The amount withheld shall be deposited to the credit of the appropriate accounts of the retirement system.

(g) The board of trustees shall take this section into consideration in adopting the biennial estimate of the amount necessary to pay the state's contributions to the system.

(h) This section does not apply to state contributions for members employed by a school district in a school year if the district's tax rate for maintenance and operation revenues for the tax year that ended in the preceding school year equals or exceeds 125 percent of the statewide average tax rate for school district maintenance and operation revenues for that tax year. For a tax year, the statewide average tax rate for school district maintenance and operation revenues is the tax rate that, if applied to the statewide total appraised value of taxable property for every school district in the state according to the appraisal roll certified for each district for the tax year as provided by Section 26.01, Tax Code, would produce an amount equal to the statewide total amount of maintenance and operation taxes imposed in the tax year for every school district in the state.

Sec. 825.406 ~~[35.405]~~. COLLECTION OF CONTRIBUTIONS FROM FEDERAL OR PRIVATE SOURCES; OFFENSE; PENALTY. (a) If an employer applies for money provided by the United States, an agency of the United States, or a privately sponsored source, and if any of the money will pay part or all of an employee's salary, the employer shall apply for any legally available money to pay state contributions required by Section 825.404 ~~[35.404]~~ or 830.201 ~~[36.201 of this subtitle]~~.

(b) When an employer receives money for state contributions from an application made in accordance with Subsection (a) ~~[of this section]~~, the employer shall immediately send the money to the retirement system for deposit in the general revenue fund of the state treasury.

(c) Monthly, employers shall report to the retirement system in a form prescribed by the system:

(1) the name of each employee paid in whole or part from a grant;

(2) the source of the grant;

(3) the amount of the employee's salary paid from the grant;

(4) the amount of the money provided by the grant for state contributions for the employee; and

(5) any other information the retirement system determines is necessary to enforce this section.

(d) The retirement system may:

(1) require from employers reports of applications for money;

(2) require evidence that the applications include requests for funds available to pay state contributions to the retirement system for employees paid from the grant; and

(3) examine the records of any employer to determine compliance with this section and rules promulgated under it.

(e) A person commits an offense if the person is an administrator of an employer and knowingly fails to comply with this section.

(f) An offense under Subsection (e) ~~[of this section]~~ is a Class C misdemeanor.

(g) An employer who fails to comply with this section may not, after the failure, apply for or spend any money from a federal or private grant. The retirement system shall report alleged noncompliance to the attorney general, the state treasurer, the Legislative Budget Board, the comptroller of public accounts, and the governor. The attorney general shall bring a writ of mandamus against the employer to compel compliance with this section.

Sec. 825.407 ~~[35.4051]~~. COLLECTION OF CONTRIBUTIONS FROM NONEDUCATIONAL AND GENERAL FUNDS. (a) In this section:

(1) "General academic teaching institution" has the meaning assigned by ~~[Subdivision (3),]~~ Section 61.003, Education Code.

(2) "Medical and dental unit" has the meaning assigned by ~~[Subdivision (5),]~~ Section 61.003, Education Code.

(3) "Noneducational and general funds" means all funds of an institution of higher education except those funds used as a method of financing for an institutional appropriation in the General Appropriations Act or dedicated by the Constitution of the State of Texas.

(b) The governing board of each general academic teaching institution and the governing board of each medical and dental unit shall reimburse the state, from noneducational and general funds of the institution or unit, for state contributions that are made based on any portion of a member's salary that is paid from the noneducational and general funds.

(c) The designated disbursing officer of each general academic teaching institution and the designated disbursing officer of each medical and dental unit shall submit to the retirement system, at a time and in the manner prescribed by the retirement system, a monthly report containing:

(1) the name of each member employed by the institution or unit who, for the most recent payroll period, was paid wholly or partly from noneducational and general funds;

(2) the amount of the employee's salary for the most recent payroll period that was paid from noneducational and general funds;

(3) a certification of the total amount of employer contributions due under this section for the payroll period; and

(4) any other information the retirement system determines is necessary to administer this section.

(d) A monthly report required under Subsection (c) ~~[of this section]~~ shall be accompanied by payment of the amount certified under Subdivision (3) of that subsection.

(e) After the end of each fiscal year, the retirement system shall report to the comptroller of public accounts and the State Auditor the name of any general academic teaching institution and any medical and dental unit delinquent in the reimbursement of contributions under this section for the preceding fiscal year and the amount by which each reported institution or unit is delinquent.

(f) Any portion of the reimbursement required under this section to be made for a fiscal year by a general academic teaching institution or a medical and dental unit that remains unpaid on the first day of the next fiscal year accrues interest, beginning on that day or the due date for the portion, whichever is later, at an annual rate, compounded monthly, equal to the rate established under ~~[Subsection (b) of]~~ Section 825.313(b), ~~[35.310 of this subtitle]~~ plus two percent.

(g) The retirement system shall submit all money it receives under this section to the comptroller of public accounts for deposit in the *general revenue fund* ~~[General Revenue Fund]~~.

Sec. 825.408 ~~[35.406]~~. INTEREST ON CONTRIBUTIONS AND FEES; DEPOSITS IN TRUST. (a) An employing district that fails to remit, before the 11th day after the last day of a month, all member and employer deposits required by this subchapter to be remitted by the district for the month shall pay to the retirement system, in addition to



the deposits, interest on the unpaid amounts at an annual rate compounded monthly. The rate of interest is the rate established under Section ~~825.313(b)(2)~~ ~~[35.310(b)(2) of this subtitle]~~, plus two percent. Interest required under this section is creditable to the interest account.

(b) An employing district and its trustees hold amounts due to the retirement system under this subtitle in trust for the retirement system and its members and may not divert the amounts to any other purpose.

Sec. ~~825.409~~ ~~[35.407]~~. EMPLOYER PICKUP OF MEMBER CONTRIBUTIONS. (a) Each employer shall pick up the employee contribution required of each of its employees by Section ~~825.403~~ ~~[35.403 of this subtitle]~~ for all compensation earned after December 31, 1987. Employers shall pay to the retirement system the picked-up contributions from the same source of funds that is used in paying earnings to the employees. Such payments shall be in lieu of contributions by the employees. An employer shall pick up these contributions by a corresponding reduction in the cash salary of the employees, by an offset against a future salary increase, or by a combination of a salary reduction and offset against a future salary increase. Employees *do* ~~[shall]~~ not have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

(b) Contributions picked up as provided *by* ~~[in]~~ Subsection (a) ~~[of this section]~~ shall be treated as employer contributions in determining tax treatment of the amounts under the United States Internal Revenue Code; however, each employer shall continue to withhold federal income taxes on these picked-up contributions until the Internal Revenue Service determines or the federal courts rule that pursuant to Section 414(h) of the Internal Revenue Code of 1986 (26 U.S.C. ~~[U.S.C.A.]~~ Section ~~414~~ ~~[414(h)]~~) these picked-up contributions *may* ~~[shall]~~ not be included as gross income of the employee until such time as they are distributed or made available.

(c) Employee contributions picked up as provided *by* ~~[in]~~ Subsection (a) ~~[of this section]~~ shall be transmitted to the retirement system in the manner required by Section ~~825.403~~ ~~[35.403 of this subtitle]~~. Employee contributions picked up by an employer and credited to the employee's account shall be treated for all other purposes as if the amount were a part of the member's annual compensation and had been deducted pursuant to ~~[the provisions of]~~ Section ~~825.403(a)~~ ~~[35.403(a) of this subtitle]~~.

[Sections ~~825.410–825.500~~ ~~[35.408–35.500]~~ reserved for expansion]

#### SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

Sec. ~~825.501~~ ~~[35.501]~~. STATEMENT OF AMOUNT IN INDIVIDUAL ACCOUNTS. The board of trustees shall furnish, on written request, to a member of the retirement system a statement of the amount credited to the member's individual account. The board is not required to furnish more than one statement a calendar year.

Sec. ~~825.502~~ ~~[35.502]~~. PAYMENT OF CONTRIBUTIONS TO A MEMBER ABSENT FROM SERVICE. (a) If a demand for the accumulated contributions of a member with fewer than 10 years of service has not been made in accordance with Section ~~822.005~~ ~~[32.005 of this subtitle]~~ before the seventh anniversary of the member's last day of service, the retirement system shall return to the member or to the member's heirs all accumulated contributions of the member.

(b) If the member or the member's heirs cannot be found, the member's accumulated contributions are forfeited to the retirement system. The retirement system shall credit the amount forfeited to the retired reserve account.

Sec. ~~825.503~~ ~~[35.503]~~. REPRODUCTION AND PRESERVATION OF RECORDS. (a) The retirement system may photograph, microphotograph, or film all records pertaining to a member's individual file, accounting records, district report records, and investment records.

(b) If a record is reproduced under Subsection (a) ~~[of this section]~~, the retirement system may destroy or dispose of the original record if the system first:

- (1) places the reproduction in conveniently accessible files; and
- (2) provides for the preservation, examination, and use of the reproduction.

(c) A photograph, microphotograph, or film of a record reproduced under Subsection (a) ~~[of this section]~~ is equivalent to the original record for all purposes, including introduction as evidence in all courts and administrative agency proceedings. A duly certified or authenticated copy of such a photograph, microphotograph, or film is admissible as evidence equally with the original photograph, microphotograph, or film.

(d) The executive secretary or an authorized representative may certify the authenticity of a photograph, microphotograph, or film of a record reproduced under this section and shall charge a fee for the certified photograph, microphotograph, or film as provided by law.

(e) Certified records shall be furnished to any person who is authorized by law to receive them.

Sec. 825.504 [35.504]. EMPLOYER CERTIFICATION TO BOARD. (a) An employer annually shall certify to the board of trustees the beginning date of the contract of each member whose contract year begins after June 30 and continues after August 31 of the same calendar year.

(b) The board of trustees by rule may prescribe the form of and procedures for filing certifications required by this section.

Sec. 825.505 [35.505]. AUDITS. For the purpose of determining the propriety of contributions or credits, the records of an employer concerning the employment and compensation of its personnel are subject to examination, in the offices of the employer during regular working hours, by representatives of the retirement system designated to conduct the examination.

Sec. 825.506 [35.506]. PLAN QUALIFICATION. (a) It is intended that the provisions of this subtitle be construed and administered in a manner that the retirement system's benefit plan will be considered a qualified plan under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. [U.S.C.A.] Section 401 [401(a)]). The board of trustees may adopt rules that modify the plan to the extent necessary for the retirement system to be a qualified plan. Rules adopted by the board of trustees are to be considered a part of the plan.

(b) In determining qualification status under Section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. [U.S.C.A.] Section 401 [401(a)]), the retirement system's benefit plan shall be considered primary. An employer may not provide employee retirement or deferred benefits to the extent that, when considered together with the benefits authorized by this subtitle as required by federal law, would result in the retirement system's plan failing to meet federal qualification standards as applied to public pension plans.

## CHAPTER 830 [36]. OPTIONAL RETIREMENT PROGRAM

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 830.001 [36.001]. PURPOSE OF CHAPTER

Sec. 830.002 [36.002]. OPTIONAL RETIREMENT PROGRAM

Sec. 830.003 [36.003]. APPLICATION

Sec. 830.004 [36.004]. ADMINISTRATION

Sec. 830.005 [36.005]. EXEMPTION FROM TAXES

[Sections 830.006–830.100 [36.006–36.100] reserved for expansion]

## SUBCHAPTER B. PARTICIPATION

Sec. 830.101 [36.101]. ELIGIBILITY TO PARTICIPATE

Sec. 830.102 [36.102]. OPTION TO PARTICIPATE

Sec. 830.103 [36.103]. EFFECT OF TRANSFERS AND CHANGES  
IN EMPLOYMENT STATUSSec. 830.104 [36.104]. WITHDRAWAL OF CONTRIBUTIONS TO THE  
RETIREMENT SYSTEM

Sec. 830.105 [36.105]. TERMINATION OF PARTICIPATION

Sec. 830.106 [36.106]. ELIGIBILITY FOR RESUMPTION OF MEMBERSHIP

[Sections 830.107–830.200 [36.107–36.200] reserved for expansion]

## SUBCHAPTER C. CONTRIBUTIONS AND BENEFITS

Sec. 830.201 [36.201]. CONTRIBUTIONS

Sec. 830.202 [36.202]. COLLECTION AND DISBURSEMENT OF CONTRIBUTIONS

Sec. 830.203 [36.202]. COLLECTION OF CONTRIBUTIONS FROM  
NONEDUCATIONAL AND GENERAL FUNDS

Sec. 830.204 [36.203]. SALARY REDUCTION AGREEMENT

Sec. 830.205 [36.204]. BENEFITS

## CHAPTER 830 [36]. OPTIONAL RETIREMENT PROGRAM

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 830.001 [36.001]. PURPOSE OF CHAPTER. The purpose of this chapter is to establish a complete retirement program for faculty members employed in state-supported institutions of higher education as an incentive that will attract high quality faculties and thereby improve the level of education at state-supported colleges and universities.

Sec. 830.002 [36.002]. OPTIONAL RETIREMENT PROGRAM. (a) The optional retirement program established as provided by this subtitle shall provide for contributions to any type of investment authorized by [in] Section 403(b) of the [federal] Internal Revenue Code of 1986 (26 U.S.C. Section 403) [1954, 42 U.S. Code], as it existed on January 1, 1981, and for the purchase of fixed or variable retirement annuities that meet the requirements of that section and Section 401(g) of the [federal] Internal Revenue Code of 1986 (26 U.S.C. Section 401) [1954, 42 U.S. Code, as amended].

(b) Participation in the optional retirement program is an alternative to active membership in the retirement system.

Sec. 830.003 [36.003]. APPLICATION. In this chapter, the term "institution of higher education" includes the *Texas Higher Education Coordinating Board*, ~~Texas College and University System~~, the Texas State Technical Institute, and the institutions defined in Section 821.001(10) [31.001(10) of this subtitle], but excludes the Rodent and Predatory Animal Control Service.

Sec. 830.004 [36.004]. ADMINISTRATION. (a) A governing board may provide for contributions to any type of investment authorized by ~~in~~ Section 403(b) of the ~~federal~~ Internal Revenue Code of 1986 (26 U.S.C. Section 403) [1954, 42 U.S. Code], as it existed on January 1, 1981, and may arrange the purchase of annuity contracts from any insurance or annuity company that is qualified to do business in this state.

(b) If a governing board has more than one component institution, agency, or unit under its jurisdiction, the governing board may provide a separate optional retirement program for each component or may place two or more components under a single program.

Sec. 830.005 [36.005]. EXEMPTION FROM TAXES. If qualified to do business in this state, a life insurance or annuity company is exempt from the payment of franchise or premium taxes on annuity or group insurance policies issued under a benefit program authorized and at least partly paid for by the governing board of an institution of higher education.

[Sections 830.006-830.100 [36.006-36.100] reserved for expansion]

#### SUBCHAPTER B. PARTICIPATION

Sec. 830.101 [36.101]. ELIGIBILITY TO PARTICIPATE. (a) The governing board of each institution of higher education shall provide an opportunity to participate in the optional retirement program to all faculty members in the component institutions governed by the board.

(b) Eligibility to participate in the optional retirement program is subject to rules adopted by the Texas Higher Education Coordinating Board.

(c) A person who before September 1, 1987, had chosen to participate in the optional retirement program and who was participating in the program on September 1, 1987, is entitled to continue to participate in the program until the person terminates participation as provided by ~~Subsection (a) of~~ Section 830.105(a) [36.105 of this subtitle].

Sec. 830.102 [36.102]. OPTION TO PARTICIPATE. (a) A member of the retirement system who is eligible to participate in the optional retirement program may elect to continue as a member of the retirement system or to participate in the optional retirement program.

(b) A person eligible to participate in the optional retirement program on the date the program becomes available at the person's place of employment must elect to participate in the program no later than August 1 of the calendar year after the year in which the program becomes available.

(c) A person who becomes eligible to participate in the optional retirement program after the date the program becomes available at the person's place of employment must elect to participate before the 91st day after becoming eligible.

(d) An eligible person who does not elect to participate in the optional retirement program is considered to have chosen to continue membership in the retirement system.

Sec. 830.103 [36.103]. EFFECT OF TRANSFERS AND CHANGES IN EMPLOYMENT STATUS. (a) An institution of higher education shall accept the transfer of a participant's optional retirement program from another institution of higher education.

(b) If, after participating in the optional retirement program for at least one year, a person becomes employed in an institution of higher education in a position normally covered by the retirement system, the person shall continue participation in the optional retirement program if the person has had no intervening employment in the public schools other than in an institution of higher education.

Sec. ~~830.104~~ [36.104]. WITHDRAWAL OF CONTRIBUTIONS TO THE RETIREMENT SYSTEM. (a) A person who is a participant in the optional retirement program may withdraw accumulated contributions from the retirement system.

(b) An application to withdraw contributions under this section must be in writing and on a form prescribed by the board of trustees.

(c) Before the first anniversary of the date an application is received, the retirement system shall pay a withdrawing member the member's accumulated contributions.

(d) A person who withdraws contributions under this section relinquishes all accrued rights in the retirement system.

(e) Nothing in Section ~~830.105~~ [36.105 ~~of this subtitle~~] precludes the election by a participant to withdraw accumulated contributions under this section.

Sec. ~~830.105~~ [36.105]. TERMINATION OF PARTICIPATION. (a) A person terminates participation in the optional retirement program, without losing any accrued benefits, by:

(1) death;

(2) retirement; or

(3) termination of employment in all institutions of higher education.

(b) A change of company providing optional retirement program benefits or a participant's transfer between institutions of higher education is not a termination of employment.

(c) The benefits of an annuity purchased under the optional retirement program are available only if the participant obtains the age of 70½ years or terminates participation in the program as provided by Subsection (a) ~~[of this section]~~.

Sec. ~~830.106~~ [36.106]. ELIGIBILITY FOR RESUMPTION OF MEMBERSHIP. A participant in the optional retirement program is not eligible for membership in the retirement system unless the person:

(1) terminates employment covered by the optional retirement program; and

(2) becomes employed in the public school system in a position that is not eligible for participation in the optional retirement program.

[Sections ~~830.107–830.200~~ [36.107–36.200] reserved for expansion]

#### SUBCHAPTER C. CONTRIBUTIONS AND BENEFITS

Sec. ~~830.201~~ [36.201]. CONTRIBUTIONS. (a) Each fiscal year the state shall contribute to the optional retirement program an amount equal to 8½ percent of the aggregate annual compensation of all participants in the program during that year. A participant in the optional retirement program shall contribute to the program 6.65 percent of the person's annual compensation.

(b) Contributions required by this section shall be credited to the benefit of the participant.

(c) In this section, "annual compensation" has the meaning assigned to that term by Section ~~821.001(4)~~ [31.001(4) ~~of this subtitle~~].

Sec. ~~830.202~~ [36.202]. COLLECTION AND DISBURSEMENT OF CONTRIBUTIONS. (a) The contributions of participants in the optional retirement program shall be made by salary reduction pursuant to an agreement made under Section ~~830.204~~ [36.203 ~~of this subtitle~~].

(b) The comptroller of public accounts shall pay the state's contributions to the optional retirement program to the appropriate institutions of higher education.

(c) The disbursing officer of an institution of higher education shall pay the contributions collected under this section to the company providing the optional retirement program for that institution.

(d) An institution of higher education shall certify to the comptroller, in the manner provided for estimate of state contributions to the retirement system, estimates of funds required for the payments by the state under this section.

Sec. ~~830.203~~ [36.201]. COLLECTION OF CONTRIBUTIONS FROM NONEDUCATIONAL AND GENERAL FUNDS. (a) In this section:

(1) "General academic teaching institution" has the meaning assigned by ~~[Subdivision (3),]~~ Section 61.003, Education Code.

(2) "Medical and dental unit" has the meaning assigned by ~~[Subdivision (5),]~~ Section 61.003, Education Code.

(3) "Noneducational and general funds" means all funds of an institution of higher education except those funds used as a method of financing for an institutional appropriation in the General Appropriations Act or dedicated by the Constitution of the State of Texas.

(b) The governing board of each general academic teaching institution and the governing board of each medical and dental unit shall reimburse the state, from noneducational and general funds of the institution or unit, for state contributions that are made based on any portion of an optional retirement program participant's salary that is paid from the noneducational and general funds.

(c) The designated disbursing officer of each general academic teaching institution and the designated disbursing officer of each medical and dental unit shall submit to the retirement system, at a time and in the manner prescribed by the retirement system, a monthly report containing:

(1) the name of each optional retirement program participant employed by the institution or unit who, for the most recent payroll period, was paid wholly or partly from noneducational and general funds;

(2) the amount of the employee's salary for the most recent payroll period that was paid from noneducational and general funds;

(3) a certification of the total amount of employer contributions due under this section for the payroll period; and

(4) any other information the retirement system determines is necessary to administer this section.

(d) A monthly report required under Subsection (c) ~~[of this section]~~ shall be accompanied by payment of the amount certified under Subdivision (3) of that subsection.

(e) After the end of each fiscal year, the retirement system shall report to the comptroller of public accounts and the State Auditor the name of any general academic teaching institution and any medical and dental unit delinquent in the reimbursement of contributions under this section for the preceding fiscal year and the amount by which each reported institution or unit is delinquent.

(f) Any portion of the reimbursement required under this section to be made for a fiscal year by a general academic teaching institution or a medical and dental unit that remains unpaid on the first day of the next fiscal year accrues interest, beginning on that day or the due date for the portion, whichever is later, at an annual rate, compounded monthly, equal to the rate established under ~~[Subsection (b) of]~~ Section ~~825.313(b)~~, ~~[35.310 of this subtitle]~~ plus two percent.

(g) The retirement system shall submit all money it receives under this section to the comptroller of public accounts for deposit in the *general revenue fund* ~~[General Revenue Fund]~~.

Sec. ~~830.204~~ [36.203]. SALARY REDUCTION AGREEMENT. (a) A participant in the optional retirement program and the employing institution of higher education, acting through its governing board, shall execute an agreement under which the salary of the participant is reduced by the amount of the contribution required under Section ~~830.201~~ ~~[36.201 of this subtitle]~~ and under which the employer contributes an amount equal to the reduction for any type of investment authorized in Section 403(b) of the Internal Revenue

Code of 1986 (26 U.S.C. Section 403) or toward the purchase of an annuity under the program.

(b) An agreement under this section is irrevocable until the earlier of the time:

(1) the participant ceases participation in the optional retirement program; or

(2) it is determined by the Internal Revenue Service or by legislative enactment that the contributions of participants to the optional retirement program are elective deferrals within the meaning of Section 402 of the Internal Revenue Code of 1986 (26 U.S.C. Section 402).

Sec. 830.205 [36.204]. **BENEFITS.** Benefits in the optional retirement program vest in a participant after one year of participation in one or more optional retirement plans operating in one or more institutions of higher education.

#### SUBTITLE D [E]. JUDICIAL RETIREMENT SYSTEM OF TEXAS PLAN ONE

##### CHAPTER 831 [41]. GENERAL PROVISIONS

##### [SUBCHAPTER A. GENERAL PROVISIONS]

##### Sec. 831.001 [41.001]. DEFINITIONS

##### Sec. 831.002 [41.002]. PURPOSE OF SUBTITLE

##### Sec. 831.003 [41.003]. RETIREMENT SYSTEM

##### Sec. 831.004 [41.004]. EXEMPTION FROM EXECUTION

#### SUBTITLE D [E]. JUDICIAL RETIREMENT SYSTEM OF TEXAS PLAN ONE

##### CHAPTER 831 [41]. GENERAL PROVISIONS

##### [SUBCHAPTER A. GENERAL PROVISIONS]

Sec. 831.001 [41.001]. **DEFINITIONS.** In this subtitle:

(1) "Annuity" means an amount of money payable in monthly installments for life or for another period as provided by this subtitle.

(2) "Board of trustees" means the entity given responsibility under Section 835.001 [45.001 of this subtitle] for the administration of the retirement system.

(3) "Judicial officer" means a person who presides over a court or a commission to a court named in Section 832.001 [42.001 of this subtitle] and who has never been a member of the Judicial Retirement System of Texas Plan Two.

(4) "Retiree" means a person who receives an annuity based on service that was credited to the person.

(5) "Retirement system" means the Judicial Retirement System of Texas Plan One or, as to periods before September 1, 1985, the Judicial Retirement System of Texas.

(6) "Service credit" means the amount of membership, military, and equivalent membership service ascribed by the retirement system to a person and for which the person has made required contributions.

(7) "Supreme court" means the Supreme Court of Texas.

Sec. 831.002 [41.002]. **PURPOSE OF SUBTITLE.** The purpose of this subtitle is to establish a program of benefits for members, retirees, and other beneficiaries of the retirement system and to establish rules for the management and operation of the retirement system.

Sec. 831.003 [41.003]. **RETIREMENT SYSTEM.** The retirement system is an entity of the state. The [name of the Judicial Retirement System of Texas is changed to the] Judicial Retirement System of Texas Plan One is the name by which[, and] all [its] business of the retirement system shall be transacted and all its property held [under that name]. Unless the context clearly indicates otherwise, a reference in law to the

Judicial Retirement System of Texas is a reference to the Judicial Retirement System of Texas Plan One.

Sec. ~~831.004~~ [41.004]. EXEMPTION FROM EXECUTION. All annuity and other benefit payments from the retirement system, contribution refunds, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and local taxation, levy, sale, and any other process, and are unassignable.

#### CHAPTER 832 [42]. MEMBERSHIP

##### SUBCHAPTER A. MEMBERSHIP

Sec. 832.001 [42.001]. ELIGIBILITY FOR MEMBERSHIP

Sec. 832.002 [42.002]. MEMBERSHIP FEE

Sec. 832.003 [42.003]. TERMINATION OF MEMBERSHIP

Sec. 832.004 [42.004]. WITHDRAWAL OF CONTRIBUTIONS

[Sections 832.005–832.100 [42.005–42.100] reserved for expansion]

##### SUBCHAPTER B. RESUMPTION OF JUDICIAL SERVICE BY RETIREE

Sec. 832.101 [42.103]. INELIGIBILITY FOR MEMBERSHIP

#### CHAPTER 832 [42]. MEMBERSHIP

##### SUBCHAPTER A. MEMBERSHIP

Sec. 832.001 [42.001]. ELIGIBILITY FOR MEMBERSHIP. (a) Except as provided by Subsection (b) [~~of this section~~], membership in the retirement system is limited to persons who have never been eligible for membership in the Judicial Retirement System of Texas Plan Two and who, before the date the Judicial Retirement System of Texas Plan Two began operation, became judges, justices, and commissioners of:

- (1) the supreme court;
- (2) the court of criminal appeals;
- (3) courts of appeals;
- (4) district courts; and
- (5) commissions to a court specified in this subsection.

(b) Except as provided by Section 832.101 [42.103 ~~of this subtitle~~], membership in the retirement system includes persons who are appointed under *Subchapter C of Chapter 75 [Chapter 578, Acts of the 68th Legislature, Regular Session, 1983 (Article 200c, Vernon's Texas Civil Statutes)]*, and who have never been members of the Judicial Retirement System of Texas Plan Two. A member appointed under that Act is a judicial officer for purposes of this subtitle.

(c) Membership in the retirement system is mandatory for eligible persons.

(d) Membership in the retirement system begins on the first day an eligible person holds a judicial office specified in Subsection (a) [~~of this section~~].

Sec. 832.002 [42.002]. MEMBERSHIP FEE. Each member of the retirement system annually shall pay the system a membership fee of \$10.

Sec. 832.003 [42.003]. TERMINATION OF MEMBERSHIP. A person terminates membership in the retirement system by:

- (1) death;
- (2) retirement based on service credited in the retirement system; or
- (3) withdrawal of the person's contributions to the retirement system.



Sec. ~~832.004~~ [42.004]. WITHDRAWAL OF CONTRIBUTIONS. (a) If a member resigns a judicial office or otherwise ceases to be a judicial officer, the member may withdraw all of *the member's* [his or her] contributions to the retirement system.

(b) A withdrawal of contributions cancels the person's service credit in the retirement system.

[Sections ~~832.005–832.100~~ [42.005–42.100] reserved for expansion]

#### SUBCHAPTER B. RESUMPTION OF JUDICIAL SERVICE BY RETIREE

Sec. ~~832.101~~ [42.103]. INELIGIBILITY FOR MEMBERSHIP. A retiree who makes an election under *Subchapter C of Chapter 74* [Chapter 156, Acts of the 40th Legislature, Regular Session, 1927 (Article 200a, Vernon's Texas Civil Statutes)] or who is appointed under *Subchapter C of Chapter 75* [Chapter 578, Acts of the 68th Legislature, Regular Session, 1983 (Article 200c, Vernon's Texas Civil Statutes)] may not rejoin the retirement system or receive credit in the retirement system for the period of an appointment or for any service performed under assignment.

#### CHAPTER ~~833~~ [43]. CREDITABLE SERVICE

##### SUBCHAPTER A. GENERAL PROVISIONS

##### Sec. ~~833.001~~ [43.001]. TYPES OF CREDITABLE SERVICE

[Sections ~~833.002–833.100~~ [43.002–43.100] reserved for expansion]

##### SUBCHAPTER B. ESTABLISHMENT OF SERVICE

##### Sec. ~~833.101~~ [43.101]. CURRENT SERVICE

##### Sec. ~~833.102~~ [43.102]. SERVICE CREDIT PREVIOUSLY CANCELED

##### Sec. ~~833.103~~ [43.103]. MILITARY SERVICE

##### Sec. ~~833.104~~ [43.104]. SERVICE ON DOMESTIC RELATIONS OR SPECIAL JUVENILE COURT.

#### CHAPTER ~~833~~ [43]. CREDITABLE SERVICE

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. ~~833.001~~ [43.001]. TYPES OF CREDITABLE SERVICE. The types of service creditable in the retirement system are:

- (1) membership service;
- (2) military service; and
- (3) equivalent membership service.

[Sections ~~833.002–833.100~~ [43.002–43.100] reserved for expansion]

##### SUBCHAPTER B. ESTABLISHMENT OF SERVICE

Sec. ~~833.101~~ [43.101]. CURRENT SERVICE. Membership service is credited in the retirement system for each month in which a member holds a judicial office and for which the member makes the required contribution.

Sec. ~~833.102~~ [43.102]. SERVICE CREDIT PREVIOUSLY CANCELED. If a person who has withdrawn contributions to the retirement system and canceled service credit under Section ~~832.004~~ [42.004 of this subtitle] subsequently rejoins the retirement system, the member may not become eligible for retirement benefits from the retirement system unless the person redeposits with the system the amount withdrawn. Payment under this section reestablishes the service credit canceled by the refund.

Sec. ~~833.103~~ [43.103]. **MILITARY SERVICE.** (a) An eligible member may establish service credit in the retirement system for military service performed that is creditable in the retirement system.

(b) A member eligible to establish military service credit is one who:

- (1) currently contributes to the retirement system;
- (2) has at least 8 years of service credit in the retirement system; and
- (3) does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent.

(c) Military service creditable in the retirement system is active duty federal military service performed during a time that the United States is or was engaged in armed conflict. The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of armed conflict.

(d) A member may not establish more than 48 months of service credit in the retirement system for military service.

(e) A member may establish credit under this section by depositing with the retirement system a contribution computed for each month of military service claimed at the rate of six percent of the member's current monthly state salary.

Sec. ~~833.104~~ [43.104]. **SERVICE ON DOMESTIC RELATIONS OR SPECIAL JUVENILE COURT.** (a) An eligible member may establish equivalent membership service credit in the retirement system for service performed as judge of a domestic relations or special juvenile court.

(b) A member eligible to establish credit under this section is one who ~~[serves or]~~ served as judge:

(1) of a domestic relations or special juvenile court on the date that the court ~~[is or]~~ was abolished by the Family District Court Act~~[-as amended]~~ (former Article 1926a, Vernon's Texas Civil Statutes); or

(2) of a district or appellate court on the date that a domestic relations or special juvenile court ~~[is or]~~ was abolished by the Family District Court Act~~[-as amended]~~ (former Article 1926a, Vernon's Texas Civil Statutes), but formerly served as judge of a court abolished by that Act.

(c) A member may establish credit under this section by depositing with the retirement system a contribution in an amount, except as provided by Subsection (f) ~~[of this section]~~, computed at the rate of six percent of the state salary of a district judge for the member's full tenure on the abolished court, plus interest computed at the rate of interest credited to a person's account in the Texas County and District Retirement System for the period of the service or, for service performed before January 1, 1968, at the rate of six percent a calendar year.

(d) A member who establishes credit under this section forfeits all rights to benefits based on the claimed service in the Texas County and District Retirement System, except rights to benefits based on the amount paid by the county for the service that exceeds the amount of state salary that would have been paid for the service.

(e) The Texas County and District Retirement System shall transfer to the retirement system the amount credited to the member's account, whether contributed by the member or the member's employer, plus accumulated interest, except any amount representing contributions or interest on salary that exceeds the state salary that would have been paid for the service.

(f) The retirement system shall credit the amount transferred by the Texas County and District Retirement System against the member's required payment under this section. If the total of the amount transferred and the amount paid by the member exceeds the amount required by this section, the retirement system shall leave the excess in the general revenue fund.

(g) The amount of contributions credited in the retirement system to a member who establishes credit under this section is the amount that the member would have contributed as a district judge at the time the service was performed.

## CHAPTER 834 [44]. BENEFITS

## SUBCHAPTER A. GENERAL PROVISIONS

## Sec. 834.001 [44.001]. TYPES OF BENEFITS

## Sec. 834.002 [44.002]. APPLICATION FOR RETIREMENT

## Sec. 834.003 [44.003]. CERTIFICATION BY CHIEF JUSTICE

## Sec. 834.004 [44.004]. INELIGIBILITY FOR BENEFITS

[Sections 834.005–834.100 [44.006–44.100] reserved for expansion]

## SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

## Sec. 834.101 [44.101]. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY

## Sec. 834.102 [44.102]. SERVICE RETIREMENT ANNUITY

## Sec. 834.103 [44.103]. OPTIONAL SERVICE RETIREMENT ANNUITY

[Sections 834.104–834.200 [44.104–44.200] reserved for expansion]

## SUBCHAPTER C. DISABILITY RETIREMENT BENEFITS

## Sec. 834.201 [44.201]. ELIGIBILITY FOR DISABILITY RETIREMENT ANNUITY

## Sec. 834.202 [44.202]. INFORMATION ABOUT PHYSICAL INCAPACITY

## Sec. 834.203 [44.203]. DISABILITY RETIREMENT ANNUITY

[Sections 834.204–834.300 [44.204–44.300] reserved for expansion]

## SUBCHAPTER D. DEATH BENEFITS

## Sec. 834.301 [44.301]. SELECTION OF DEATH BENEFIT PLAN BY MEMBER

Sec. 834.302 [44.302]. SELECTION OF DEATH BENEFIT PLAN BY  
SURVIVOR OF MEMBER

## Sec. 834.303 [44.303]. RETURN OF CONTRIBUTIONS

## Sec. 834.304 [44.304]. RETURN OF EXCESS CONTRIBUTIONS

## CHAPTER 834. BENEFITS

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 834.001 [44.001]. TYPES OF BENEFITS. The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) disability retirement benefits; and
- (3) death benefits.

Sec. 834.002 [44.002]. APPLICATION FOR RETIREMENT. A member may apply for service or disability retirement by filing an application for retirement with the board of trustees before the date the member wishes to retire.

Sec. 834.003 [44.003]. CERTIFICATION BY CHIEF JUSTICE. An annuity may not be paid under this subtitle until the chief justice of the supreme court certifies to the comptroller of public accounts and to the board of trustees that the applicant for the annuity is entitled to it.

Sec. 834.004 [44.004]. INELIGIBILITY FOR BENEFITS. An annuity that is based on service of a member who is removed from judicial office by impeachment, or otherwise for official misconduct, may not be paid under this subtitle.

[Sections 834.005–834.100 [44.006–44.100] reserved for expansion]

#### SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

Sec. 834.101 [44.101]. **ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY.** (a) A member is eligible to retire and receive a base service retirement annuity if the member:

(1) is at least 65 years old, currently holds a judicial office, and has at least 10 years of service credited in the retirement system, the most recently performed of which was for a continuous period of at least one year;

(2) is at least 65 years old and has at least 12 years of service, continuous or otherwise, credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(3) has at least 20 years of service credited in the retirement system, the most recently performed of which was for a continuous period of at least 10 years, regardless of whether the member currently holds a judicial office.

(b) A member who meets service requirements provided by Subsection (a)(1) or (a)(2) [of this section] is eligible to retire and receive a service retirement annuity actuarially reduced as provided by Section 834.102(d) [44.102(d) of this subtitle] from the standard service retirement annuity, if the member is at least 60 years old.

(c) A member's resignation from a judicial office before applying for an annuity does not make the member ineligible for the annuity unless the member applies for an annuity under Subsection (a)(1) [of this section].

Sec. 834.102 [44.102]. **SERVICE RETIREMENT ANNUITY.** (a) The base service retirement annuity is an amount equal to 50 percent of the state salary, as adjusted from time to time, being paid a judge of a court of the same classification as the court on which the retiree last served before retirement.

(b) The retirement system shall increase by 10 percent of the amount of the applicable state salary under Subsection (a) or (d) [of this section], the annuity of a member who on the effective date of retirement has not been out of judicial office for more than one year.

(d) The service retirement annuity of a person qualifying for retirement under Section 834.101(b) [44.101(b) of this subtitle] is an amount computed as a percentage of the state salary, as adjusted from time to time, being paid a judge of a court of the same classification as the court on which the retiree last served before retirement, according to the following schedule:

age at retirement	percentage of state salary
at least 60 but less than 61	40 percent
at least 61 but less than 62	41.7 percent
at least 62 but less than 63	43.6 percent
at least 63 but less than 64	45.6 percent
at least 64 but less than 65	47.7 percent

Sec. 834.103 [44.103]. **OPTIONAL SERVICE RETIREMENT ANNUITY.** (a) Instead of a service retirement annuity payable under Section 834.102 [44.102 of this subtitle], a retiring member may elect to receive an optional service retirement annuity, payable throughout the life of the retiree and actuarially reduced, under tables adopted by the board of trustees, from the annuity otherwise payable to its actuarial equivalent.

(b) Optional service retirement annuities available to a retiring member are those available to retiring members of the Employees Retirement System of Texas under Section 814.108(c) [24.108(c) of Subtitle C of this title].

(c) A person may apply for an optional service retirement annuity by filing an application for the annuity with the retirement system before the 31st day after the date of the person's retirement.

(d) The computation of an optional service retirement annuity must include the ages of the retiring member and the member's designated beneficiary at the time of the member's retirement.

[Sections 834.104–834.200 [44.104–44.200] reserved for expansion]

#### SUBCHAPTER C. DISABILITY RETIREMENT BENEFITS

##### Sec. 834.201 [44.201]. ELIGIBILITY FOR DISABILITY RETIREMENT ANNUITY.

(a) A member is eligible, regardless of age, to retire from regular active service for disability and receive a disability retirement annuity if the member has at least seven years of service credit in the retirement system.

(b) A member otherwise eligible may not receive a disability retirement annuity unless the chief justice of the supreme court certifies that the member is mentally or physically incapacitated for the further performance of regular judicial duties.

(c) A disability retirement annuity may be denied on the ground that a claimed physical incapacity is caused by or results from an intemperate use of alcohol or narcotic drugs.

Sec. 834.202 [44.202]. INFORMATION ABOUT PHYSICAL INCAPACITY. (a) A member who applies for retirement because of physical incapacity shall file with the supreme court written reports by two physicians licensed to practice medicine in this state, fully reporting the claimed physical incapacity.

(b) The chief justice of the supreme court may appoint a physician licensed in this state to make any additional medical investigation the court finds necessary.

Sec. 834.203 [44.203]. DISABILITY RETIREMENT ANNUITY. (a) Except as provided by Subsection (b) or (c) [of this section], a disability retirement annuity is an amount computed as provided by Section 834.102 [44.102 of this subtitle].

(b) The amount of a disability retirement annuity is not reducible because of the age of the retiring member but may be increased as provided by Section 834.102(b) [44.102(b) of this subtitle], if applicable.

(c) Instead of a disability retirement annuity computed as provided by Section 834.102 [44.102 of this subtitle], a retiring member may elect to receive an optional disability retirement annuity payable as provided by Section 834.103 [44.103 of this subtitle].

(d) A disability retirement annuity is payable for the duration of the retiree's disability. If a retiree who has selected an optional disability retirement annuity dies while receiving the annuity, the annuity is payable throughout the life of the retiree's designated beneficiary or for a guaranteed period after the date of retirement, depending on the option selected.

[Sections 834.204–834.300 [44.204–44.300] reserved for expansion]

#### SUBCHAPTER D. DEATH BENEFITS

##### Sec. 834.301 [44.301]. SELECTION OF DEATH BENEFIT PLAN BY MEMBER. (a)

A contributing member who has at least 10 years of service credit in the retirement system, or a noncontributing member who has at least 12 years of service credit, may select a death benefit plan for the payment, if the member dies before retirement, of a death benefit annuity to one or more persons designated by the member. Death benefit annuities available for selection by a member described in this subsection are the optional annuities provided by Sections 814.108(c)(1) and (c)(4) [24.108(c)(1) and 24.108(c)(4) of Subtitle C of this title].

(b) A member who meets the requirements of Section 814.301(b) [24.301(b) of Subtitle C of this title] may select a death benefit plan under that subsection. Section 814.301(c) [24.301(c) of Subtitle C of this title] applies to a death benefit plan selected by a member in applicable circumstances.

(c) The computation of a death benefit annuity must include the ages of the member and of the member's designated beneficiary at the time of the member's death.

(d) A member may select a death benefit plan by filing an application for a plan with the board of trustees on a form prescribed by the board. After selection, a death benefit plan may take effect at death unless the member amends the plan, selects a retirement annuity at the time of the member's retirement, or becomes ineligible to select a plan.

(e) A death benefit annuity is payable beginning on the day after the date the member dies.

Sec. ~~834.302~~ [44.302]. SELECTION OF DEATH BENEFIT PLAN BY SURVIVOR OF MEMBER. (a) If a member eligible to select a death benefit plan under Section ~~834.301(a)~~ [44.301(a) ~~of this subtitle~~] dies without having made a selection, the member's surviving spouse may select a plan in the same manner as if the member had made the selection. If there is no surviving spouse, the personal representative of the decedent's estate may make the selection.

(b) If a person dies who meets the description in Section ~~814.302(b)~~ [24.302(b) ~~of Subtitle C of this title~~], the person's surviving spouse or the guardian of surviving minor children may select a death benefit plan under that subsection.

Sec. ~~834.303~~ [44.303]. RETURN OF CONTRIBUTIONS. (a) Except as provided by Subsection (c) [of this section], if a member dies before retirement, the amount of the member's contributions to the retirement system is payable as a lump-sum death benefit.

(b) The benefit provided by this section is payable to a person designated by the member in a signed document filed with the board of trustees. If a member does not designate a beneficiary, the benefit is payable to the member's estate.

(c) A death benefit may not be paid under this section if a death benefit annuity has been selected as provided by Section ~~834.301~~ [44.301] or ~~834.302~~ [44.302 ~~of this subtitle~~].

Sec. ~~834.304~~ [44.304]. RETURN OF EXCESS CONTRIBUTIONS. (a) Except as provided by Subsection (c) [of this section], if a person dies after retirement, a lump-sum death benefit is payable in an amount, if any, by which the retiree's contributions to the retirement system on the date of retirement exceed the amount of annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the retiree's designated beneficiary. If a retiree dies without having designated a beneficiary, the benefit is payable to the person entitled to distribution of the decedent's estate, if that person or the personal representative of the decedent's estate claims the benefit before the second anniversary of the decedent's death.

(c) A death benefit may not be paid under this section if an optional retirement annuity has been selected as provided by Section ~~834.103~~ [44.103] or ~~834.203~~ [44.203 ~~of this subtitle~~].

## CHAPTER 835 [45]. ADMINISTRATION

## SUBCHAPTER A. POWERS AND DUTIES

## Sec. 835.001 [45.001]. GENERAL ADMINISTRATION

## Sec. 835.002 [45.002]. RULEMAKING

## Sec. 835.003 [45.003]. DEPOSIT OF CERTAIN FUNDS

[Sections 835.004–835.100 [45.004–45.100] reserved for expansion]

## SUBCHAPTER B. CONTRIBUTIONS

## Sec. 835.101 [45.101]. MEMBER CONTRIBUTIONS

## Sec. 835.102 [45.102]. STATE CONTRIBUTIONS

## Sec. 835.103 [45.103]. CONTRIBUTIONS FOR SENIOR DISTRICT COURT JUDGES

## CHAPTER 835 [45]. ADMINISTRATION

## SUBCHAPTER A. POWERS AND DUTIES

Sec. 835.001 [45.001]. GENERAL ADMINISTRATION. The board of trustees of the Employees Retirement System of Texas is responsible for the general administration and operation of the retirement system.

Sec. 835.002 [45.002]. RULEMAKING. Subject to the limitations of this subtitle, the board of trustees may adopt rules and provide for forms as it finds necessary for the administration of the retirement system.

Sec. 835.003 [45.003]. DEPOSIT OF CERTAIN FUNDS. (a) The retirement system shall deposit membership fees paid as required by Section 832.002 [42.002 of this subtitle] in the expense fund of the Employees Retirement System of Texas, to compensate for the costs of administering this retirement system.

(b) The retirement system shall deposit in the general revenue fund all other amounts paid to the system.

[Sections 835.004–835.100 [45.004–45.100] reserved for expansion]

## SUBCHAPTER B. CONTRIBUTIONS

Sec. 835.101 [45.101]. MEMBER CONTRIBUTIONS. (a) Each month the payroll officer responsible for paying the state compensation of a judicial officer who is a member of the retirement system shall deduct from the state compensation of the judicial officer a contribution computed at the rate required of a member of the employee class of the Employees Retirement System of Texas.

(b) Contributions deducted as provided by this section are deposited in the general revenue fund, where they are subject to appropriation as are other amounts in the fund.

Sec. 835.102 [45.102]. STATE CONTRIBUTIONS. The legislature is obligated to appropriate the amount of money necessary to administer this subtitle for each fiscal year.

Sec. 835.103 [45.103]. CONTRIBUTIONS FOR SENIOR DISTRICT COURT JUDGES. Contributions for members appointed under *Subchapter C of Chapter 75* [Chapter 578, Acts of the 68th Legislature, Regular Session, 1983 (Article 200c, Vernon's Texas Civil Statutes),] are as provided by Section 75.113 [Subsections (d) and (f) of Section 9 of that Act].

SUBTITLE E [H]. JUDICIAL RETIREMENT SYSTEM OF TEXAS PLAN TWO

CHAPTER 836 [71]. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 836.001 [71.001]. DEFINITIONS

Sec. 836.002 [71.002]. PURPOSE OF SUBTITLE

Sec. 836.003 [71.003]. RETIREMENT SYSTEM

Sec. 836.004 [71.004]. EXEMPTION FROM EXECUTION

Sec. 836.005 [71.005]. POWERS AND PRIVILEGES

Sec. 836.006 [71.006]. DIVERSION OF MONEY PROHIBITED

[Sections 836.007–836.100 [71.007–71.100] reserved for expansion]

SUBCHAPTER B. PENAL PROVISIONS

Sec. 836.101 [71.101]. CONVERSION OF MONEY; FRAUD

Sec. 836.102 [71.102]. PENALTIES

SUBTITLE E [H]. JUDICIAL RETIREMENT SYSTEM OF TEXAS PLAN TWO

CHAPTER 836 [71]. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 836.001 [71.001]. DEFINITIONS. In this subtitle:

(1) "Accumulated contributions" means the total of amounts in a member's individual account in the retirement system, including:

(A) amounts deducted from the compensation of the member;

(B) other member deposits required to be placed in the member's individual account; and

(C) interest credited to amounts in the member's individual account.

(2) "Annuity" means an amount of money payable in monthly installments for life or for another period as provided by this subtitle.

(3) "Board of trustees" means the entity given responsibility under Section 840.001 [75.001 of this subtitle] for the administration of the retirement system.

(4) "Executive director" means the person appointed under Section 815.202 [25.202 of this title].

(5) "Judicial officer" means a person who presides over a court or a commission to a court named in Section 837.001 [72.001 of this subtitle] and who has never been a member of the Judicial Retirement System of Texas or the Judicial Retirement System of Texas Plan One.

(6) "Medical board" means the entity designated under Section 840.202 [75.202 of this subtitle].

(7) "Retiree" means a person who receives from the retirement system an annuity based on service that was credited to the person.

(8) "Retirement system" means the Judicial Retirement System of Texas Plan Two.

(9) "Service credit" means the amount of membership, military, and equivalent membership service ascribed by the retirement system to a person and for which the person has made required contributions.

(10) "Supreme court" means the Supreme Court of Texas.

(11) "Compensation" includes amounts by which a member's salary is reduced under a salary reduction agreement authorized by Article 6252–3d, Revised Statutes.



Sec. ~~836.002~~ [71.002]. PURPOSE OF SUBTITLE. The purpose of this subtitle is to establish a program of benefits for members, retirees, and other beneficiaries of the retirement system and to establish rules for the management and operation of the retirement system.

Sec. ~~836.003~~ [71.003]. RETIREMENT SYSTEM. The retirement system is an entity of the state. The Judicial Retirement System of Texas Plan Two is the name in which all its business shall be transacted and all its property held.

Sec. ~~836.004~~ [71.004]. EXEMPTION FROM EXECUTION. All annuity and other benefit payments from the retirement system, contribution refunds, and rights accrued or accruing under this subtitle to any person are exempt from garnishment, attachment, state and local taxation, levy, sale, and any other process and are unassignable.

Sec. ~~836.005~~ [71.005]. POWERS AND PRIVILEGES. The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

Sec. ~~836.006~~ [71.006]. DIVERSION OF MONEY PROHIBITED. Except as provided by Sections ~~840.101(b) and 840.305(c)~~ [Subsection (b) of Section 75.101 and Subsection (c) of Section 75.305 of this subtitle], no part of the money contributed to the retirement system under Section ~~840.102~~ [Sections 75.102] or ~~840.104~~ [75.104 of this subtitle] and no part of the contribution described by [Subdivision (2) of Subsection (b) of] Section ~~840.103(b)(2)~~ [75.103 of this subtitle] may be used for or diverted to any purpose other than the exclusive benefit of members, their beneficiaries, and annuitants of the retirement system.

[Sections ~~836.007–836.100~~ [71.007–71.100] reserved for expansion]

#### SUBCHAPTER B. PENAL PROVISIONS

Sec. ~~836.101~~ [71.101]. CONVERSION OF MONEY; FRAUD. (a) A person commits an offense if the person knowingly or intentionally confiscates, misappropriates, or converts money representing deductions from a member's salary either before or after the money is received by the retirement system.

(b) A person commits an offense if the person knowingly or intentionally makes a false statement or falsifies or permits to be falsified any record of the retirement system in an attempt to defraud the retirement system.

(c) A member commits an offense if the member accepts as a salary money that the member knows should have been deducted as provided by this subtitle from the member's salary.

Sec. ~~836.102~~ [71.102]. PENALTIES. (a) An offense under [Subsection (a) or (c) of] Section ~~836.101(a) or (c)~~ [71.101 of this subtitle] is punishable in the manner provided by Section 31.03, Penal Code, for the punishment of the offenses included in that section.

(b) An offense under [Subsection (b) of] Section ~~836.101(b)~~ [71.101 of this subtitle] is punishable in the manner provided by Section 37.10, Penal Code, for the punishment of the offenses included in that section.

CHAPTER 837 [72]. MEMBERSHIP

SUBCHAPTER A. MEMBERSHIP

Sec. 837.001 [72.001]. ELIGIBILITY FOR MEMBERSHIP

Sec. 837.002 [72.002]. TERMINATION OF MEMBERSHIP

Sec. 837.003 [72.003]. WITHDRAWAL OF CONTRIBUTIONS

[Sections 837.004–837.100 [72.004–72.100] reserved for expansion]

SUBCHAPTER B. RESUMPTION OF JUDICIAL SERVICE BY RETIREE

Sec. 837.101 [72.101]. JUDICIAL ASSIGNMENT

Sec. 837.102 [72.102]. RESUMPTION OF FULL-TIME JUDICIAL SERVICE

CHAPTER 837 [72]. MEMBERSHIP

SUBCHAPTER A. MEMBERSHIP

Sec. 837.001 [72.001]. ELIGIBILITY FOR MEMBERSHIP. (a) Except as provided by Subsection (b) ~~[of this section]~~, membership in the retirement system is limited to persons who have never been eligible for membership in the Judicial Retirement System of Texas or the Judicial Retirement System of Texas Plan One and who at any time on or after the effective date of this Act are judges, justices, or commissioners of:

- (1) the supreme court;
- (2) the court of criminal appeals;
- (3) a court of appeals;
- (4) a district court; or
- (5) a commission to a court specified in this subsection.

(b) Except as provided by Section 837.101 [72.101 ~~of this subtitle~~], membership in the retirement system includes persons who are appointed under *Subchapter C of Chapter 75 [Chapter 578, Acts of the 68th Legislature, Regular Session, 1983 (Article 200c, Vernon's Texas Civil Statutes)]* and who have never been members of the Judicial Retirement System of Texas or the Judicial Retirement System of Texas Plan One. A member appointed under that Act is a judicial officer for purposes of this subtitle.

(c) Membership in the retirement system is mandatory for eligible persons.

(d) Membership in the retirement system begins on the first day an eligible person holds a judicial office specified in Subsection (a) ~~[of this section]~~.

Sec. 837.002 [72.002]. TERMINATION OF MEMBERSHIP. A person's membership in the retirement system is terminated by:

- (1) death of the person;
- (2) retirement based on service credited in the retirement system;
- (3) withdrawal of all of the person's accumulated contributions; or
- (4) transfer of the person's accumulated contributions under ~~[Subsection (f) of] Section 840.401(f) [75.401 of this subtitle]~~.

Sec. 837.003 [72.003]. WITHDRAWAL OF CONTRIBUTIONS. (a) If a member resigns a judicial office or otherwise ceases to be a judicial officer, the member may withdraw all of the member's accumulated contributions in the retirement system.

(b) A withdrawal of contributions cancels the person's service credit in the retirement system and terminates the person's rights to benefits based on the credit.

(c) A member initiates a withdrawal of contributions by filing an application for a refund with the retirement system.

(d) Deposits representing interest or membership fees that are required of a member to establish service credit under Section ~~838.102~~ [73.102] or ~~838.103~~ [73.103 of this subtitle] are not refundable.

[Sections ~~837.004–837.100~~ [72.004–72.100] reserved for expansion]

#### SUBCHAPTER B. RESUMPTION OF JUDICIAL SERVICE BY RETIREE

Sec. ~~837.101~~ [72.101]. JUDICIAL ASSIGNMENT. A retiree who makes an election under *Subchapter C of Chapter 74* [Chapter 156, Acts of the 40th Legislature, Regular Session, 1927 (Article 200a, Vernon's Texas Civil Statutes)], or who is appointed under *Subchapter C of Chapter 75* [Chapter 578, Acts of the 68th Legislature, Regular Session, 1983 (Article 200c, Vernon's Texas Civil Statutes)], may not rejoin or receive credit in the retire ment system for the period of an appointment or for any service performed under assignment.

Sec. ~~837.102~~ [72.102]. RESUMPTION OF FULL-TIME JUDICIAL SERVICE. (a) A retiree who resumes service as a judicial officer other than by appointment or assignment described in Section ~~837.101~~ [72.101 of this subtitle] may not rejoin or receive credit in the retirement system for the resumed service.

(b) The retirement system shall suspend annuity payments to a retiree who resumes service described by this section. A suspension of payments begins on the date a retiree takes the oath of office and ends on a date when:

(1) the retiree no longer holds the office; and

(2) the retiree, or the retiree's beneficiary if the retiree has died, has applied to the retirement system for resumption of payments.

(c) Time during which annuity payments are suspended as provided by this section does not reduce the number of months payments are to be made under an optional benefit plan providing for a specific amount of benefits for a guaranteed number of months after retirement.

(d) Before a retiree takes the oath of office for a position as a judicial officer other than under appointment or assignment described by Section ~~837.101~~ [72.101 of this subtitle], the retiree shall notify the retirement system in writing of the resumption of office and the projected dates of service.

#### CHAPTER 838 [73]. CREDITABLE SERVICE

##### SUBCHAPTER A. GENERAL PROVISIONS

###### Sec. ~~838.001~~ [73.001]. TYPES OF CREDITABLE SERVICE

[Sections ~~838.002–838.100~~ [73.002–73.100] reserved for expansion]

##### SUBCHAPTER B. ESTABLISHMENT OF SERVICE

###### Sec. ~~838.101~~ [73.101]. CURRENT SERVICE

###### Sec. ~~838.102~~ [73.102]. SERVICE CREDIT PREVIOUSLY CANCELED

###### Sec. ~~838.103~~ [73.103]. MILITARY SERVICE

###### Sec. ~~838.104~~ [73.104]. SERVICE ON DOMESTIC RELATIONS OR SPECIAL JUVENILE COURT

#### CHAPTER 838 [73]. CREDITABLE SERVICE

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. ~~838.001~~ [73.001]. TYPES OF CREDITABLE SERVICE. The types of service creditable in the retirement system are:

(1) membership service;

- (2) military service; and
- (3) equivalent membership service.

[Sections 838.002-838.100 ~~[73.002-73.100]~~ reserved for expansion]

#### SUBCHAPTER B. ESTABLISHMENT OF SERVICE

Sec. 838.101 ~~[73.101]~~. **CURRENT SERVICE.** Membership service is credited in the retirement system for each month in which a member holds a judicial office and for which the member makes the required contribution.

Sec. 838.102 ~~[73.102]~~. **SERVICE CREDIT PREVIOUSLY CANCELED.** If a person who has withdrawn contributions to the retirement system and canceled service credit under Section 837.003 ~~[72.003 of this subtitle]~~ subsequently rejoins the retirement system, the member may not become eligible for retirement benefits from the retirement system unless the person redeposits with the system the amount withdrawn, plus all membership fees due, plus interest computed on the basis of the state fiscal year at an annual rate of five percent from the date of withdrawal to the date of redeposit. Payment under this section reestablishes the service credit canceled by the refund.

Sec. 838.103 ~~[73.103]~~. **MILITARY SERVICE.** (a) An eligible member may establish service credit in the retirement system for military service performed that is creditable in the retirement system.

(b) A member eligible to establish military service credit is one who:

- (1) currently contributes to the retirement system;
- (2) has at least eight years of service credit in the retirement system;
- (3) does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent; and
- (4) has been released from military duty under conditions not dishonorable.

(c) Military service creditable in the retirement system is active duty federal military service performed during a time that the United States is or was engaged in armed conflict. The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of armed conflict.

(d) A member may not establish more than 48 months of service credit in the retirement system for military service.

(e) A member may establish credit under this section by depositing with the retirement system in a lump sum a contribution computed for each month of military service claimed at the rate of six percent of the member's current monthly state compensation, plus, if the member does not establish the credit before the first anniversary of the date of first eligibility, interest computed on the basis of the state fiscal year at an annual rate of 10 percent from the date of first eligibility to the date of deposit.

(f) The state shall contribute for each month of military service established under this section an amount computed on the basis of the member's current monthly state compensation at the rate of state contribution, as provided by ~~[Subsection (a) of]~~ Section 840.103(a) ~~[75.103 of this subtitle]~~, for the fiscal year in which the credit is established.

(g) The board of trustees may require members applying for credit under this section to submit any information the board considers necessary to enable it to determine eligibility for credit, amount of service, or amounts of required contributions.

(h) The retirement system shall use military service credit in computing death benefits and in determining eligibility to select an optional death benefit plan.

(i) The retirement system shall use military service credit in computing service or disability retirement benefits only if the member has, without military service credit, enough service credit to entitle the member to retire for service or disability, as applicable.

Sec. 838.104 ~~[73.104]~~. **SERVICE ON DOMESTIC RELATIONS OR SPECIAL JUVENILE COURT.** (a) An eligible member may establish equivalent membership service

credit in the retirement system for service performed as judge of a domestic relations or special juvenile court.

(b) A member eligible to establish credit under this section is one who ~~[serves or]~~ served as judge:

(1) of a domestic relations or special juvenile court on the date that the court ~~[is or]~~ was abolished by the Family District Court Act (*former* Article 1926a, Vernon's Texas Civil Statutes); or

(2) of a district or appellate court on the date that a domestic relations or special juvenile court ~~[is or]~~ was abolished by the Family District Court Act (*former* Article 1926a, Vernon's Texas Civil Statutes), but formerly served as judge of a court abolished by that Act.

(c) A member may establish credit under this section by depositing with the retirement system a contribution in an amount, except as provided by Subsection (f) ~~[of this section]~~, computed at the rate of six percent of the state salary of a district judge for the member's full tenure on the abolished court, plus interest computed at the rate of interest credited to a person's account in the Texas County and District Retirement System for the period of the service or, for service performed before January 1, 1968, at the rate of six percent a calendar year.

(d) A member who establishes credit under this section forfeits all rights to benefits based on the claimed service in the Texas County and District Retirement System, except rights to benefits based on the amount paid by the county for the service that exceeds the amount of state salary that would have been paid for the service.

(e) The Texas County and District Retirement System shall transfer to the retirement system the amount credited to the member's account, whether contributed by the member or the member's employer, plus accumulated interest, except any amount representing contributions or interest on salary that exceeds the state salary that would have been paid for the service.

(f) The retirement system shall credit the amount transferred by the Texas County and District Retirement System against the member's required payment under this section. If the total of the amount transferred and the amount paid by the member exceeds the amount required by this section, the retirement system shall leave the excess in the retirement system trust fund.

(g) The amount of contributions credited in the retirement system to a member who establishes credit under this section is the amount that the member would have contributed to the retirement system, the Judicial Retirement System of Texas, or the Judicial Retirement System of Texas Plan One as a district judge at the time the service was performed.

CHAPTER 839 [74]. BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 839.001 [74.001]. TYPES OF BENEFITS

Sec. 839.002 [74.002]. APPLICATION FOR RETIREMENT

Sec. 839.003 [74.003]. INELIGIBILITY FOR BENEFITS

[Sections 839.004–839.100 [74.004–74.100] reserved for expansion]

SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

Sec. 839.101 [74.101]. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY

Sec. 839.102 [74.102]. SERVICE RETIREMENT ANNUITY

Sec. 839.103 [74.103]. OPTIONAL SERVICE RETIREMENT ANNUITY

Sec. 839.104 [74.104]. LIMITATION ON SERVICE RETIREMENT ANNUITY

[Sections 839.105–839.200 [74.105–74.200] reserved for expansion]

SUBCHAPTER C. DISABILITY RETIREMENT BENEFITS .

Sec. 839.201 [74.201]. ELIGIBILITY FOR DISABILITY RETIREMENT ANNUITY

Sec. 839.202 [74.202]. DISABILITY REPORTS

Sec. 839.203 [74.203]. DISABILITY RETIREMENT ANNUITY

[Sections 839.204–839.300 [74.204–74.300] reserved for expansion]

SUBCHAPTER D. DEATH BENEFITS

Sec. 839.301 [74.301]. SELECTION OF DEATH BENEFIT PLAN BY MEMBER

Sec. 839.302 [74.302]. SELECTION OF DEATH BENEFIT PLAN BY  
SURVIVOR OF MEMBER

Sec. 839.303 [74.303]. MEMBER DEATH BENEFITS GENERALLY

Sec. 839.304 [74.304]. RETURN OF EXCESS CONTRIBUTIONS

Sec. 839.305 [74.305]. RETURN OF EXCESS CONTRIBUTIONS

[Sections 839.306–839.400 [74.306–74.400] reserved for expansion]

SUBCHAPTER E. INCREASES IN BENEFITS

Sec. 839.401 [74.401]. ANNUITY INCREASE AFTER DEATH OR RETIREMENT

CHAPTER 839 [74]. BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 839.001 [74.001]. TYPES OF BENEFITS. The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) disability retirement benefits; and
- (3) death benefits.

Sec. 839.002 [74.002]. APPLICATION FOR RETIREMENT. (a) A member may apply for service or disability retirement by filing an application for retirement with the board of trustees.

(b) An application for a service retirement annuity may not be made:

- (1) after the date the member wishes to retire; or

(2) more than 90 days before the date the member wishes to retire.

Sec. ~~839.003~~ [74.003]. INELIGIBILITY FOR BENEFITS. An annuity that is based on service of a member who is removed from judicial office by impeachment, or otherwise for official misconduct, may not be paid under this subtitle.

[Sections ~~839.004–839.100~~ [74.004–74.100] reserved for expansion]

#### SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

Sec. ~~839.101~~ [74.101]. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY. (a) A member is eligible to retire and receive a service retirement annuity if the member:

(1) is at least 65 years old, currently holds a judicial office, and has at least 10 years of service credited in the retirement system, the most recently performed of which was for a continuous period of at least one year;

(2) is at least 65 years old and has at least 12 years of service, continuous or otherwise, credited in the retirement system, regardless of whether the member currently holds a judicial office; or

(3) has at least 25 years of service credited in the retirement system, the most recently performed of which was for a continuous period of at least 10 years, regardless of whether the member currently holds a judicial office.

(b) A member who meets service requirements provided by ~~[Subdivision (1) or (2) of Subsection (a)(1) or (a)(2) of this section]~~ is eligible to retire and receive a service retirement annuity actuarially reduced as provided by ~~[Subsection (c) of Section 839.102(c) [74.102 of this subtitle]]~~ from the standard service retirement annuity, if the member is at least 60 years old.

(c) A member's resignation from a judicial office before applying for an annuity does not make the member ineligible for the annuity unless the member applies for an annuity under ~~[Subdivision (1) of Subsection (a)(1) of this section]~~.

Sec. ~~839.102~~ [74.102]. SERVICE RETIREMENT ANNUITY. (a) Except as provided by Subsections (b) and (c) ~~[of this section]~~, the standard service retirement annuity is an amount computed on the basis of the member's average monthly compensation for the 36 highest months of compensation during the last 60 months of service, multiplied by one-twelfth of three percent for each month of service that is credited in the retirement system.

(b) The standard service retirement annuity may not be more than 60 percent of the average monthly compensation computed under Subsection (a) ~~[of this section]~~.

(c) The standard service retirement annuity of a person qualifying for retirement under ~~[Subsection (b) of Section 839.101(b) [74.101 of this subtitle]]~~ is an amount computed as provided by Subsection (a) ~~[of this section]~~, reduced by one-third of one percent for each whole or partial calendar month that occurs during the period from the date of retirement to the date of the retiree's 65th birthday, including the months that contain the dates of retirement and birthday.

Sec. ~~839.103~~ [74.103]. OPTIONAL SERVICE RETIREMENT ANNUITY. (a) Instead of a service retirement annuity payable under Section ~~839.102~~ [74.102 of this subtitle], a retiring member may elect to receive an optional service retirement annuity provided by the board of trustees or one of the following optional service retirement annuities, actuarially reduced to an actuarially equivalent value and consisting of:

(1) an annuity payable during the retiring member's life and continuing after death in the same amount, throughout the life of one person designated by the retiring member before retirement;

(2) an annuity payable during the retiring member's life and continuing after death in an amount equal to one-half of the amount payable during the retiring member's life, throughout the life of one person designated by the retiring member before retirement;

(3) an annuity payable for the greater of the rest of the retiring member's life or 60 months; or

(4) an annuity payable for the greater of the rest of the retiring member's life or 120 months.

(b) An annuity selected under ~~[Subdivision (3) or (4) of]~~ Subsection (a)(3) or (a)(4) ~~[of this section]~~ that is payable after the retiring member's death shall be paid to one or more persons designated by the retiring member before or after retirement or, if no person has been designated or all designees die before all payments are made, to the retiree's estate.

(c) A person may apply for an optional service retirement annuity by filing an application for the annuity with the retirement system before the date of the person's retirement.

(d) The computation of an optional service retirement annuity payable throughout the life of a named individual must include the age of that individual.

(e) An optional service retirement annuity may not provide that more than 50 percent of the value of the annuity, as determined at the time of retirement, be used to provide a benefit to a person other than the person on whose service the annuity is based.

Sec. 839.104 [74.104]. LIMITATION ON SERVICE RETIREMENT ANNUITY. (a) In this section, "annual benefit" means a benefit payable annually in the form of a straight life annuity, without taking into account the value of any ancillary benefit or any portion of the benefit derived from member contributions.

(b) Except as provided by Subsections (c), (d), (e), (g), and (i) ~~[of this section]~~, the annual benefit payable under Section 839.102 [74.102] or 839.103 ~~[74.103 of this subtitle]~~ to a retiring member may not exceed the lesser of:

(1) \$90,000; or

(2) 100 percent of the member's average annual state compensation, computed by taking into account only the member's state compensation for the consecutive 36-month period during which the member was contributing and had the greatest aggregate compensation from the state as a judge, justice, or commissioner of a court described in Section 837.001 ~~[72.001 of this subtitle]~~.

(c) If payment of a benefit under Section 839.102 [74.102] or 839.103 ~~[74.103 of this subtitle]~~ begins when the retiring member is at least 55 years old but less than 62 years old, the limitation in ~~[Subdivision (1) of]~~ Subsection (b)(1) ~~[of this section]~~ is the greater of:

(1) \$75,000; or

(2) the actuarial equivalent of \$90,000, beginning at age 62.

(d) If payment of a benefit under Section 839.102 [74.102] or 839.103 ~~[74.103 of this subtitle]~~ begins when the retiring member is less than 55 years old, the limitation in ~~[Subdivision (1) of]~~ Subsection (b)(1) ~~[of this section]~~ is the greater of:

(1) the actuarial equivalent of \$75,000, beginning at age 55; or

(2) the actuarial equivalent of \$90,000, beginning at age 62.

(e) If payment of a benefit under Section 839.102 [74.102] or 839.103 ~~[74.103 of this subtitle]~~ begins when the retiring member is at least 66 years old, the limitation in ~~[Subdivision (1) of]~~ Subsection (b)(1) ~~[of this section]~~ is the actuarial equivalent of \$90,000, beginning at age 65.

(f) The interest rate assumption used to determine actuarial equivalence under Subsection (c) or (d) ~~[of this section]~~ is the greater of five percent or the rate used to determine actuarial equivalence for other purposes of the retirement system, and the interest rate assumption used to determine actuarial equivalence under Subsection (e) ~~[of this section]~~ is the lesser of five percent or the rate used to determine actuarial equivalence for other purposes of the retirement system.

(g) The board of trustees by rule shall adjust the dollar limitations included in ~~[Subdivision (1) of]~~ Subsection (b)(1) and Subsections (c), (d), and (e) ~~[of this section]~~ to conform to adjustments made by the federal Commissioner of Internal Revenue to the dollar limitations under Section 415, ~~[federal]~~ Internal Revenue Code of 1986 (26 U.S.C. Section 415).

(h) An increase in a benefit payable under Section 839.102 [74.102] or 839.103 ~~[74.103 of this subtitle]~~ that takes effect after the date payment of the benefit has begun may not



result in payment of an annual benefit that exceeds the member's average annual state compensation, as computed under ~~[Subdivision (2) of]~~ Subsection (b)(2) ~~[of this section]~~, multiplied by a fraction, the numerator of which is the dollar limitation under Section 415(b)(1)(A), ~~[federal]~~ Internal Revenue Code of 1986 (26 U.S.C. Section 415), as adjusted under Section 415(d) of that code, and the denominator of which is \$90,000.

(i) If a benefit becomes payable to a retiring member who has less than 10 years of service credit in the retirement system, the retirement system shall apply to that benefit, instead of the limitations included in Subsections (b), (c), (d), and (e) ~~[of this section]~~, limitations computed by reducing the amounts of the limitations in Subsections (b), (c), (d), and (e) by a fraction, the numerator of which is the number of years of the person's service credit and the denominator of which is 10.

[Sections 839.105–839.200 ~~[74.105–74.200]~~ reserved for expansion]

#### SUBCHAPTER C. DISABILITY RETIREMENT BENEFITS

##### Sec. 839.201 ~~[74.201]~~. ELIGIBILITY FOR DISABILITY RETIREMENT ANNUITY.

(a) A member is eligible, regardless of age, to retire from regular active service for disability and receive a disability retirement annuity if the member has at least seven years of service credit in the retirement system.

(b) A member otherwise eligible may not receive a disability retirement annuity unless the chief justice of the supreme court and the medical board certify that the member is mentally or physically incapacitated for the further performance of regular judicial duties.

(c) A disability retirement annuity may be denied on the ground that a claimed physical incapacity is caused by or results from an intemperate use of alcohol or narcotic drugs.

Sec. 839.202 ~~[74.202]~~. DISABILITY REPORTS. (a) A member who applies for retirement because of physical incapacity shall file with the retirement system and the chief justice of the supreme court written reports by two physicians licensed to practice medicine in this state, fully reporting the claimed physical incapacity.

(b) The retirement system shall refer an application for disability retirement to the medical board for its recommendations. The medical board may require an applicant to submit any additional information it considers necessary to enable it to make its recommendations.

(c) The chief justice of the supreme court may direct the retirement system to employ a physician under Section 840.203 ~~[75.203 of this subtitle]~~ or may direct the medical board to require additional information under Subsection (b) ~~[of this section]~~.

Sec. 839.203 ~~[74.203]~~. DISABILITY RETIREMENT ANNUITY. (a) Except as provided by Subsection (b) or (c) ~~[of this section]~~, a disability retirement annuity is an amount computed as provided by Section 839.102 ~~[74.102 of this subtitle]~~.

(b) The amount of a disability retirement annuity is not reducible because of the age of the retiring member.

(c) Instead of a disability retirement annuity computed as provided by Section 839.102 ~~[74.102 of this subtitle]~~, a retiring member may elect to receive an optional disability retirement annuity payable as provided by Section 839.103 ~~[74.103 of this subtitle]~~.

(d) A disability retirement annuity is payable for the duration of the retiree's disability. If a retiree who has selected an optional disability retirement annuity dies while receiving the annuity, the annuity is payable throughout the life of the retiree's designated beneficiary or for a guaranteed period after the date of retirement, depending on the option selected.

[Sections 839.204–839.300 ~~[74.204–74.300]~~ reserved for expansion]

#### SUBCHAPTER D. DEATH BENEFITS

Sec. 839.301 ~~[74.301]~~. **SELECTION OF DEATH BENEFIT PLAN BY MEMBER.** (a) An eligible member may select a death benefit plan for the payment of a death benefit annuity, to be paid if the member dies before retirement. Except as provided by Subsections (d) and (e) ~~[of this section]~~, a death benefit annuity is an amount computed, in the manner provided under *Sections 839.102(a) and (b)* ~~[Subsections (a) and (b) of Section 74.102 of this subtitle]~~ for computation of a standard service retirement annuity, as if the member had retired on the date of death and payable, beginning on the day after the date of the member's death, in one of the following ways:

- (1) throughout the life of one person designated by the member; or
- (2) to one or more persons designated by the member, for a period of 120 months.

(b) A member eligible to select a death benefit plan is one who:

- (1) is a contributing member and has at least 10 years of service credit in the retirement system;
- (2) is a noncontributing member and has at least 12 years of service credit in the retirement system; or
- (3) has a total of at least 20 years of service credit in retirement systems administered by the board of trustees.

(c) If a member who has qualified under ~~[Subdivision (1) of]~~ Subsection (b)(1) ~~[of this section]~~ and has selected a death benefit plan ceases to be a contributing member before death and does not qualify under ~~[Subdivision (2) or (3) of]~~ Subsection (b)(2) or (b)(3) ~~[of this section]~~, the selection of a plan is voided.

(d) The retirement system shall, under tables adopted by the board of trustees as provided by Section 840.005 ~~[75.005 of this subtitle]~~, actuarially reduce the amount of a death benefit annuity payable under this section for the difference between the member's age on the date of death and age 65, if the member dies before attaining that age.

(e) The computation of a death benefit annuity selected under ~~[Subdivision (1) of]~~ Subsection (a)(1) ~~[of this section]~~ must include the age of the designated recipient.

(f) A member may select a death benefit plan by filing an application for a plan with the board of trustees on a form prescribed by the board. After selection, a death benefit plan takes effect at death unless the member amends the plan, selects a retirement annuity at the time of retirement, or has chosen a plan that cannot take effect or unless the selection is voided under Subsection (c) ~~[of this section]~~.

Sec. 839.302 ~~[74.302]~~. **SELECTION OF DEATH BENEFIT PLAN BY SURVIVOR OF MEMBER.** If a member eligible to select a death benefit plan under Section 839.301 ~~[74.301 of this subtitle]~~ dies without having made a selection or if a plan selected cannot be made effective, the member's surviving spouse may select a plan in the same manner as if the member had made the selection. If there is no surviving spouse, the personal representative of the decedent's estate may make the selection.

Sec. 839.303 ~~[74.303]~~. **MEMBER DEATH BENEFITS GENERALLY.** (a) Except as provided by Subsection (c) ~~[of this section]~~, if a contributing member dies, a lump-sum death benefit is payable from the retirement system in an amount computed at the rate of five percent of the amount in the member's individual account at the time of death times the number of full years of service credit the member had at the time of death.

(b) The benefit provided by this section is payable to a person designated by the member in a signed document filed with the retirement system. If a member does not designate a beneficiary or if the beneficiary does not survive the member, the benefit is payable to the member's estate.

(c) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section 839.301 ~~[74.301 of this subtitle]~~.

Sec. 839.304 ~~[74.304]~~. RETURN OF CONTRIBUTIONS. (a) Except as provided by Subsection (c) ~~[of this section]~~, if a member dies before retirement, the amount of the member's accumulated contributions is payable as a lump-sum death benefit.

(b) The benefit provided by this section is payable to a person designated by the member in a signed document filed with the board of trustees. If a member does not designate a beneficiary, the benefit is payable to the member's estate.

(c) A death benefit may not be paid under this section if, at the time of death, the member was eligible to select a death benefit annuity under Section 839.301 ~~[74.301 of this subtitle]~~.

Sec. 839.305 ~~[74.305]~~. RETURN OF EXCESS CONTRIBUTIONS. (a) Except as provided by Subsection (c) ~~[of this section]~~, if a person dies after retirement, a lump-sum death benefit is payable in an amount, if any, by which the retiree's contributions to the retirement system on the date of retirement exceed the amount of annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the retiree's designated beneficiary. If a retiree dies without having designated a beneficiary, the benefit is payable to the person entitled to distribution of the decedent's estate if that person or the personal representative of the decedent's estate claims the benefit before the second anniversary of the decedent's death.

(c) A death benefit may not be paid under this section if an optional retirement annuity has been selected as provided by Section 839.103 ~~[74.103]~~ or 839.203(c) ~~[Subsection (c) of Section 74.203 of this subtitle]~~.

[Sections 839.306–839.400 ~~[74.306–74.400]~~ reserved for expansion]

#### SUBCHAPTER E. INCREASES IN BENEFITS

Sec. 839.401 ~~[74.401]~~. ANNUITY INCREASE AFTER DEATH OR RETIREMENT. (a) Except as provided by Subsections (b) and (e) ~~[of this section]~~, on the first day of each fiscal year, the retirement system shall increase the amounts of annuities that are payable by the system to a retiree, to the survivor of a retiree, or to the survivor of a deceased member.

(b) The retirement system may not increase under this section the amount of an annuity unless the retirement or death on which the annuity is based occurred before the first day of the preceding fiscal year.

(c) The legislature may appropriate money from the *general revenue fund* ~~[General Revenue Fund]~~ to pay the costs of increasing the amounts of annuities under this section. On the first day of each fiscal year, the state comptroller of public accounts shall transfer to the retirement system any money appropriated for the fiscal year for the purpose of this section.

(d) If the amount of money appropriated for a fiscal year is insufficient to finance the rate of increase in annuities specified in the Act making the appropriation or if the Act fails to specify a rate of increase, the board of trustees shall set the rate as the rate that the amount of money appropriated will finance for the duration of the annuities payable to those persons entitled to receive an increase in annuities under this section.

(e) If an appropriation is not made for a fiscal year for the purpose of this section, the retirement system may not increase under this section the amount of annuities for that year.

CHAPTER 840 [75]. ADMINISTRATION

SUBCHAPTER A. POWERS AND DUTIES

Sec. 840.001 [75.001]. GENERAL ADMINISTRATION

Sec. 840.002 [75.002]. RULEMAKING

Sec. 840.003 [75.003]. ADMINISTERING SYSTEM ASSETS

Sec. 840.004 [75.004]. DESIGNATION OF AUTHORITY TO SIGN VOUCHERS

Sec. 840.005 [75.005]. ADOPTING TABLES AND RATES

Sec. 840.006 [75.006]. RECORDS OF BOARD OF TRUSTEES

Sec. 840.007 [75.007]. REPORT

Sec. 840.008 [75.008]. CORRECTION OF ERRORS

Sec. 840.009 [75.009]. CHANGE BY GOVERNOR'S EXECUTIVE ORDER

[Sections 840.010–840.100 [75.010–75.100] reserved for expansion]

SUBCHAPTER B. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS; APPROPRIATIONS

Sec. 840.101 [75.101]. COLLECTION OF MEMBERSHIP FEES

Sec. 840.102 [75.102]. COLLECTION OF MEMBER CONTRIBUTIONS

Sec. 840.103 [75.103]. COLLECTION OF STATE CONTRIBUTIONS

Sec. 840.104 [75.104]. COLLECTION OF CONTRIBUTIONS FOR SENIOR DISTRICT COURT JUDGES

[Sections 840.105–840.200 [75.105–75.200] reserved for expansion]

SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

Sec. 840.201 [75.201]. LEGAL ADVISER

Sec. 840.202 [75.202]. MEDICAL BOARD

Sec. 840.203 [75.203]. OTHER PHYSICIANS

Sec. 840.204 [75.204]. ACTUARY

Sec. 840.205 [75.205]. FINANCIAL AND INVESTMENT SERVICES

Sec. 840.206 [75.206]. STATE TREASURER

Sec. 840.207 [75.207]. COMPENSATION OF EMPLOYEES;  
PAYMENT OF EXPENSES

Sec. 840.208 [75.208]. SURETY BONDS

Sec. 840.209 [75.209]. INTEREST IN INVESTMENT PROFITS PROHIBITED

[Sections 840.210–840.300 [75.210–75.300] reserved for expansion]

SUBCHAPTER D. MANAGEMENT OF ASSETS

Sec. 840.301 [75.301]. INVESTMENT OF ASSETS

Sec. 840.302 [75.302]. RESTRICTIONS ON INVESTMENTS

Sec. 840.303 [75.303]. DUTY OF CARE

Sec. 840.304 [75.304]. CASH ON HAND

Sec. 840.305 [75.305]. ESTABLISHMENT OF FUND AND ACCOUNTS

Sec. 840.306 [75.306]. INTEREST RATE

[Sections 840.307–840.400 [75.307–75.400] reserved for expansion]

SUBCHAPTER E. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

Sec. 840.401 [75.401]. TRANSFER OF ACCUMULATED CONTRIBUTIONS IN CERTAIN CIRCUMSTANCES

Sec. 840.402 [75.402]. RETIREMENT SYSTEM RECORDS

Sec. 840.403 [75.403]. REPRODUCTION AND PRESERVATION OF RECORDS

Sec. 840.404 [75.404]. BUDGET AND ACTUARIAL INFORMATION

#### CHAPTER 840 [75]. ADMINISTRATION

##### SUBCHAPTER A. POWERS AND DUTIES

Sec. 840.001 [75.001]. GENERAL ADMINISTRATION. (a) The board of trustees of the Employees Retirement System of Texas, as provided by Subchapter A of Chapter 815 [25—of this title], is responsible for the general administration and operation of the retirement system.

(b) The executive director shall recommend to the board of trustees actuarial and other services required to transact the business of the retirement system.

(c) Annually, the executive director shall prepare an itemized budget showing the amount required to pay the retirement system's expenses for the following fiscal year and shall submit the budget to the board of trustees for review and adoption.

Sec. 840.002 [75.002]. RULEMAKING. Subject to the limitations of this subtitle, the board of trustees may adopt rules and provide for forms it considers necessary for the administration of the retirement system.

Sec. 840.003 [75.003]. ADMINISTERING SYSTEM ASSETS. (a) All assets of the retirement system shall be credited to the trust fund provided by Section 840.305 [75.305 of this subtitle]. The board of trustees shall administer all assets of the retirement system. The board is the trustee of the system's assets.

(b) The board of trustees may acquire, hold, manage, purchase, sell, assign, trade, transfer, and dispose of any security, evidence of debt, or other investment in which the retirement system's assets may be invested.

Sec. 840.004 [75.004]. DESIGNATION OF AUTHORITY TO SIGN VOUCHERS. The board of trustees shall file with the state comptroller of public accounts a duly attested copy of a board resolution that designates the authorized representatives, as provided by this chapter, who have authority to sign vouchers for payment from the funds administered by the board of trustees.

Sec. 840.005 [75.005]. ADOPTING TABLES AND RATES. The board of trustees by rule shall adopt interest rates and mortality, service, and other tables the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality, service, and compensation experience of the system's members and beneficiaries.

Sec. 840.006 [75.006]. RECORDS OF BOARD OF TRUSTEES. The board shall keep a record of all of its proceedings. Records of the board are open to public inspection.

Sec. 840.007 [75.007]. REPORT. Annually, the retirement system shall publish a report containing the following information:

- (1) the retirement system's fiscal transactions of the preceding fiscal year;
- (2) the amount of the system's accumulated cash and securities; and
- (3) the balance sheet showing the financial condition of the system for the preceding fiscal year.

Sec. 840.008 [75.008]. CORRECTION OF ERRORS. If an error in the records of the retirement system results in a person receiving more or less money than the person is entitled to receive under this subtitle, the retirement system shall correct the error and so far as practicable shall adjust future payments so that the actuarial equivalent of the benefit to which the person is entitled is paid.

Sec. ~~840.009~~ [75.009]. CHANGE BY GOVERNOR'S EXECUTIVE ORDER. (a) Except as provided by Subsection (b) [~~of this section~~], the governor by executive order may alter or suspend a provision of this subtitle or impose a new provision applicable to the retirement system on a subject included in this subtitle if the governor finds that the change is necessary to protect tax qualification of the retirement system under Section 401(a), [~~federal~~] Internal Revenue Code of 1986 (26 U.S.C. Section 401).

(b) The governor may not take any action under this section that makes necessary additional contributions to the retirement system by the state or members of the system.

(c) The governor's findings, including a brief description of the reason for the findings, must be included in the text of an order issued under this section.

(d) An executive order issued under this section expires on the September 1 that follows the next regular session of the legislature that begins after the date the order is issued, unless an earlier date is specified in the order or unless the governor rescinds the order before that time.

[Sections 840.010–840.100 [75.010–75.100] reserved for expansion]

#### SUBCHAPTER B. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS; APPROPRIATIONS

Sec. 840.101 [75.101]. COLLECTION OF MEMBERSHIP FEES. (a) Each member annually shall pay a membership fee of \$10. A contributing member shall pay the fee with the member's first contribution to the retirement system in each fiscal year in the manner provided by Section 840.102 [75.102] or 840.104 [75.104 ~~of this subtitle~~] for payment of the member's contributions to the retirement system.

(b) If the membership fee is not paid with the member's first contribution of the year to the retirement system, the board of trustees may deduct the amount of the fee from that contribution or from any benefit to which the member becomes entitled.

(c) If the legislature appropriates, on behalf of each contributing member for any fiscal year, a membership fee in an amount equal to or greater than the membership fee required by Subsection (a) [~~of this section~~], the members are not required to pay the membership fee for that year.

(d) The retirement system shall deposit membership fees in an account to be used for defraying costs of administering the retirement system.

Sec. 840.102 [75.102]. COLLECTION OF MEMBER CONTRIBUTIONS. (a) Each payroll period, a judicial officer who is a member of the retirement system is required to contribute six percent of the officer's state compensation for the period to the retirement system.

(b) The payroll officer responsible for paying the state compensation of a member of the retirement system required by this section to make a contribution shall:

(1) make the required deductions from the member's state compensation;

(2) certify to the board of trustees the amounts deducted from the member's state compensation;

(3) transmit monthly, or at the time designated by the board of trustees, a certified copy of the payroll or report to the retirement system; and

(4) pay the deducted amounts to the retirement system for deposit in the trust fund of the system.

(c) To facilitate the making of deductions, the board of trustees may modify a member's required deductions by an amount that does not exceed one-tenth of one percent of the annual compensation on which the deductions are made.

(d) The retirement system shall record all receipts of member contributions and shall credit the receipts to the appropriate account.

(e) The deductions required by this section shall be made even if the member's state compensation is reduced below the amount equal to the minimum compensation provided by law.

(f) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of state compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payment period.

Sec. 840.103 [75.103]. COLLECTION OF STATE CONTRIBUTIONS. (a) During each fiscal year, the state shall contribute to the retirement system an amount equal to a percentage of the aggregate state compensation of all contributing members of the retirement system for that year, as provided by ~~[Subdivision (1) of]~~ Subsection (b)(1) ~~[of this section]~~.

(b) Before November 2 of each even-numbered year, the retirement system shall certify to the *Legislative Budget Board* ~~[legislative budget board]~~ and to the budget division of the governor's office for review:

(1) an actuarial valuation of the retirement system to determine the percentage of annual payroll required from the state to finance fully the retirement system without any unfunded liability;

(2) an estimate of the amount necessary to pay the state's contribution under Subdivision (1) ~~[of this subsection]~~ for the following biennium; and

(3) as a separate item, an estimate of the amount, in addition to anticipated receipts from membership fees, required to administer the retirement system for the following biennium.

(c) The amount certified under ~~[Subdivision 2 of]~~ Subsection (b)(2) ~~[of this section]~~ shall be included in the budget of the state that the governor submits to the legislature. The legislature may appropriate money to pay administrative costs of the retirement system.

(d) Before September 1 of each year, the retirement system shall certify to the state comptroller of public accounts and to the *state treasurer* ~~[State Treasurer]~~ an estimate of the amount necessary to pay the state's contribution under Subsection (a) ~~[of this section]~~ for the following fiscal year.

(e) All money allocated and appropriated by the state to the retirement system for benefits provided by the retirement system shall be paid, based on the annual estimate of the retirement system, in monthly installments to the retirement system. The money required for state contributions shall be from money appropriated to pay the compensation of the member for whose benefit the contribution or fee is paid. If the total of the estimated required payments is not equal to the total of the actual payments required for a fiscal year, the retirement system shall certify to the state comptroller of public accounts and the *state treasurer* ~~[State Treasurer]~~ at the end of that year the amount required for necessary adjustments, and the *state treasurer* ~~[State Treasurer]~~ shall make the required adjustments.

Sec. 840.104 [75.104]. COLLECTION OF CONTRIBUTIONS FOR SENIOR DISTRICT COURT JUDGES. Contributions for members appointed under *Subchapter C of Chapter 75* ~~[Chapter 578, Acts of the 68th Legislature, Regular Session, 1983 (Article 200c, Vernon's Texas Civil Statutes)]~~ are as provided by *Section 75.113* ~~[Subsections (d) and (f) of Section 9 of that Act]~~.

[Sections 840.105–840.200 [75.105–75.200] reserved for expansion]

#### SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

Sec. 840.201 [75.201]. LEGAL ADVISER. The attorney general of the state is the legal adviser of the board of trustees. The attorney general shall represent the board in all litigation.

Sec. 840.202 [75.202]. MEDICAL BOARD. (a) The board of trustees shall designate a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in the state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall report in writing to the chief justice of the supreme court its conclusions and recommendations on all matters referred to it.

Sec. 840.203 [75.203]. OTHER PHYSICIANS. The board of trustees may employ physicians in addition to the medical board to report on special cases.

Sec. 840.204 [75.204]. ACTUARY. (a) The board of trustees shall designate an actuary.

(b) An actuary employed under this section must be a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, or an enrolled actuary under the [federal] Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.).

(c) At least once every five years the actuary, under the direction of the board of trustees, shall make an actuarial investigation of the mortality, service, and compensation experience of the members and beneficiaries of the retirement system.

(d) On the basis of tables adopted by the board of trustees under Section 840.005 [75.005 of this subtitle], the actuary shall make a valuation of the assets and liabilities of the retirement system's funds annually.

(e) The actuary shall perform such other duties as are required by the board of trustees.

Sec. 840.205 [75.205]. FINANCIAL AND INVESTMENT SERVICES. The board of trustees may employ persons, either as full-time employees or as independent contractors, to assist the board in investing assets of the retirement system, in evaluating investments or investment services, or in otherwise managing financial operations of the retirement system.

Sec. 840.206 [75.206]. STATE TREASURER. (a) The state treasurer [State Treasurer] is the custodian of the securities, bonds, and funds of the retirement system.

(b) The state treasurer [State Treasurer] shall pay money from the trust fund of the retirement system on warrants drawn by the state comptroller of public accounts supported on vouchers signed by the executive director and the chairman of the board of trustees or their authorized representatives.

(c) The state treasurer [State Treasurer] annually shall furnish to the board of trustees a sworn statement of the amount of the retirement system's assets in the treasurer's custody.

Sec. 840.207 [75.207]. COMPENSATION OF EMPLOYEES; PAYMENT OF EXPENSES. (a) The board of trustees shall compensate all persons whom it employs and shall pay all expenses necessary to operate the retirement system at rates and in amounts approved by the board. Those rates and amounts may not exceed those paid for the same or similar service for the state.

(b) The board of trustees shall pay compensation and expenses required by Subsection (a) [of this section] from an appropriate account of the retirement system.

Sec. 840.208 [75.208]. SURETY BONDS. (a) The state treasurer [State Treasurer] shall give a surety bond in the amount of \$50,000.

(b) The executive director shall give a surety bond in an amount, determined by the board of trustees, of not less than \$25,000.

(c) The board of trustees may require any trustee or employee of the board to give a surety bond in an amount determined by the board. The bond is conditioned on the bonded person's faithful execution of the duties of the person's office.

(d) All surety bonds must be:

(1) made with a commercially sound and solvent surety company that is authorized to do business in the state;



- (2) made payable to the board of trustees; and
  - (3) approved by the board of trustees and the attorney general of the state.
- (e) The board of trustees shall pay from an appropriate account all expenses for the execution of a bond under this section, including premiums.

Sec. ~~840.209~~ [75.209]. INTEREST IN INVESTMENT PROFITS PROHIBITED. Except for an interest in retirement funds as a member of the retirement system, a trustee or employee of the board of trustees may not have a direct or indirect interest in the gains or profits of any investment made by the board and may not receive any pay or emolument for services other than *the person's* [~~his or her~~] designated compensation and authorized expenses.

[Sections ~~840.210–840.300~~ [75.210–75.300] reserved for expansion]

#### SUBCHAPTER D. MANAGEMENT OF ASSETS

Sec. ~~840.301~~ [75.301]. INVESTMENT OF ASSETS. (a) Except as provided by Section ~~840.302~~ [75.302 ~~of this subtitle~~], the board of trustees may invest and reinvest the retirement system's assets, under the standard of care provided by Section ~~840.303~~ [75.303 ~~of this subtitle~~], in the following: (1) bonds, notes, or other evidences of indebtedness, whether general or specific obligations, whose principal and interest are guaranteed by the United States, an agency of the United States, the state, or any political subdivision of the state;

- (2) equipment and other property that is used in administering the retirement system;
- (3) corporate bonds, corporate notes, and other evidences of indebtedness of a corporation if the corporation was created or exists under the laws of a state or the United States; and

(4) common and preferred stocks of companies incorporated within the United States that have paid cash dividends for 10 consecutive years immediately before the date of purchase and, unless the stocks are bank or insurance stocks, that are listed on an exchange registered with the Securities and Exchange Commission or its successor.

(b) The board of trustees shall:

- (1) invest the assets of the retirement system as a single fund without distinction as to their source; and
- (2) hold securities purchased with the assets collectively for the proportionate benefit of all accounts of the system established under [~~Subsection (b) of~~] Section ~~840.305(b)~~ [75.305 ~~of this subtitle~~].

Sec. ~~840.302~~ [75.302]. RESTRICTIONS ON INVESTMENTS. (a) The board of trustees may not invest in the stock of one corporation more than one percent of the book value of the total assets of the retirement system.

(b) The retirement system may not own more than five percent of the voting stock of one corporation.

(c) At any particular time, 25 percent or more of the book value of the assets of the retirement system must be invested in government securities described by [~~Subdivision (1) of Subsection (a) of~~] Section ~~840.301(a)(1)~~ [75.301 ~~of this subtitle~~].

Sec. ~~840.303~~ [75.303]. DUTY OF CARE. In making investments for the retirement system, the board of trustees shall exercise the judgment and care, under the circumstances prevailing at the time of the investment, that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in speculation but when making a permanent disposition of their funds, considering the probable income from the disposition and the probable safety of their capital.

Sec. ~~840.304~~ [75.304]. CASH ON HAND. (a) The board of trustees shall keep a sufficient amount of cash on hand to make payments as they become due each year under the retirement system.

(b) The amount of cash on hand may not exceed 10 percent of the total amount in the funds of the retirement system on deposit with the *state treasurer* ~~[State Treasurer]~~.

Sec. ~~840.305~~ [75.305]. ESTABLISHMENT OF FUND AND ACCOUNTS. (a) A trust fund for the Judicial Retirement System of Texas Plan Two is established in the *state treasury* ~~[State Treasury]~~.

(b) The board of trustees may establish such accounts for money in the trust fund of the retirement system as it considers necessary, in addition to members' individual accounts, for the administration of the system. All assets of the retirement system are creditable, according to the purpose for which they are held, to an appropriate account.

(c) The retirement system may transfer assets from one account to another, except from one member's individual account to another's, to pay benefits and administrative expenses as needed.

Sec. ~~840.306~~ [75.306]. INTEREST RATE. (a) Interest on money in a member's individual account in the retirement system is earned monthly and is computed at the rate of five percent a year on the mean balance of the member's account for the fiscal year.

(b) Unless an account is closed before the last day of the fiscal year, interest is computed for the fiscal year and is credited to the member's account as of the last day of the fiscal year.

(c) If an account is closed before the last day of the fiscal year, interest is computed for the following period:

(1) if the account is closed because of death, from the first day of the fiscal year through the last day of the month that preceded the month in which the member's death occurred;

(2) if the account is closed by withdrawal of accumulated contributions, from the first day of the fiscal year through the last day of the month that precedes the month in which the withdrawal request is validated by the retirement system; or

(3) if the account is closed because of retirement, from the first day of the fiscal year through the effective date of retirement.

[Sections ~~840.307–840.400~~ [75.307–75.400] reserved for expansion]

#### SUBCHAPTER E. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

Sec. ~~840.401~~ [75.401]. TRANSFER OF ACCUMULATED CONTRIBUTIONS IN CERTAIN CIRCUMSTANCES. (a) Except as provided by Subsection (b) ~~[of this section]~~, if a valid application for payment based on money or credit in a member's individual account in the retirement system is not filed with the retirement system before the expiration of five years after the last day of the most recent month of service for which the member has credit in the retirement system, the retirement system shall mail a notice to the member at the member's most recent address as shown on system records. If no address is available or if the notice is returned unclaimed, the retirement system shall cause a notice to be published in a newspaper of general circulation in the state.

(b) This section does not apply to an account of a member who has enough service credit in the retirement system to enable the member to retire at an attained age.

(c) A notice under this section must include the name of the member, the name of the court or commission on which the member most recently acquired service credit, a statement that the member is entitled to a payment of money, and a statement of the procedure for keeping the member's account open or claiming a payment.

(d) Before the 31st day after the day a notice is mailed or published under this section, whichever is later, an application must be filed with the retirement system:

(1) by the member, requesting that the account be kept open; or

(2) by the member or, if the member has died, by any other person entitled to payment based on the member's account, requesting payment based on money or credit in the account.

(e) If a valid application is made as provided by ~~Subdivision (2) of~~ Subsection (d)(2) ~~[of this section]~~, the retirement system shall pay the applicant any benefit to which the applicant is entitled.

(f) If a valid application is not made as provided by Subsection (d) ~~[of this section]~~, the retirement system shall cancel the service credit in the member's account, transfer the accumulated contributions in the account to an appropriate account, and close the member's account.

(g) Except as provided by Subsection (j) ~~[of this section]~~, if a person files with the retirement system a valid application for payment based on a closed account the accumulated contributions of which have been transferred under Subsection (f) ~~[of this section]~~, the retirement system shall reopen the member's individual account, reinstate in the account the amount transferred and credit canceled, and pay any benefit to which the applicant is entitled.

(h) Except as provided by Subsection (j) ~~[of this section]~~, if a person whose accumulated contributions have been transferred under Subsection (f) ~~[of this section]~~ again becomes a member, the retirement system shall reinstate in the member's active individual account in the retirement system the amount transferred and credit canceled.

(i) Except as provided by Subsection (j) ~~[of this section]~~, if a person whose accumulated contributions have been transferred under Subsection (f) ~~[of this section]~~ would be eligible to receive a benefit from the retirement system under Chapter 803 ~~[13 of this title]~~ were the person's account not closed, the person may file with the retirement system an application for retirement, and the retirement system shall reopen the person's account and reinstate the canceled credit for the purpose of allowing the person to retire.

(j) A payment under Subsection (g) ~~[of this section]~~, a reinstatement under Subsection (h) ~~[of this section]~~, or a retirement under Subsection (i) ~~[of this section]~~ precludes action under any other of those subsections.

(k) If a member makes an application as provided by ~~Subdivision (1) of~~ Subsection (d)(1) ~~[of this section]~~, the retirement system, after the fifth anniversary of the date the application was filed, shall reinstitute the process provided by Subsections (a), (c), (d), (e), and (f) ~~[of this section]~~ if disposition of money and credit in the account has not been made before that time.

(l) The retirement system may apply the process provided by Subsections (a), (c), (d), (e), and (f) ~~[of this section]~~ to other money it holds for payment if the system first determines that no claim for the money is likely to be filed.

Sec. 840.402 ~~[75.402]~~. RETIREMENT SYSTEM RECORDS. Records of members and beneficiaries of the retirement system that are in the custody of the system are considered to be personnel records and are required to be treated as confidential information under Subdivision (1), ~~[of]~~ Subsection (a), ~~[of]~~ Section 3, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Sec. 840.403 ~~[75.403]~~. REPRODUCTION AND PRESERVATION OF RECORDS. (a) The retirement system may photograph, microphotograph, or film any record in its possession.

(b) If a record is reproduced under Subsection (a) ~~[of this section]~~, the retirement system may destroy or dispose of the original record if the system first:

- (1) places the reproduction in a conveniently accessible file; and
- (2) provides for the preservation, examination, and use of the reproduction.

(c) A photograph, microphotograph, or film of a record reproduced under Subsection (a) ~~[of this section]~~ is equivalent to the original record for all purposes, including introduction as evidence in all courts and administrative agency proceedings. A duly certified or authenticated copy of such a photograph, microphotograph, or film is admissible as evidence equally with the original photograph, microphotograph, or film.

(d) The executive director or an authorized representative may certify the authenticity of a photograph, microphotograph, or film of a record reproduced under this section and

shall charge a fee for the certified photograph, microphotograph, or film as provided by law.

(e) Certified records shall be furnished to any person who is authorized by law to receive them.

Sec. ~~840.404~~ [75.404]. **BUDGET AND ACTUARIAL INFORMATION.** The retirement system shall keep, in convenient form, data necessary for actuarial valuation of the funds of the retirement system and for checking the system's expenses.

**SUBTITLE F. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM**

**CHAPTER 841 [51]. GENERAL PROVISIONS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 841.001 [51.001]. DEFINITIONS**

**Sec. 841.002 [51.002]. PURPOSE OF SUBTITLE**

**Sec. 841.003 [51.003]. RETIREMENT SYSTEM**

**Sec. 841.004 [51.004]. POWERS AND PRIVILEGES**

**Sec. 841.005 [51.005]. ACTION FOR ACCOUNTING**

**Sec. 841.006 [51.006]. EXEMPTION FROM EXECUTION**

**Sec. 841.007 [51.007]. REDUCTION OF ANNUITY PAYMENTS ON REQUEST**

**Sec. 841.008 [51.008]. APPLICATIONS BY, AND PAYMENTS TO, PERSONS  
OTHER THAN THE MEMBER**

**Sec. 841.009 [51.009]. DIVORCE-DECREE PAYMENTS PROTECTED**

[Sections ~~841.010–841.100~~ [51.010–51.100] reserved for expansion]

**SUBCHAPTER B. PENAL PROVISIONS**

**Sec. 841.101 [51.101]. OFFENSES; PENALTY**

**SUBTITLE F. TEXAS COUNTY AND DISTRICT RETIREMENT SYSTEM**

**CHAPTER 841 [51]. GENERAL PROVISIONS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 841.001 [51.001]. DEFINITIONS.** In this subtitle:

(1) "Actuarial equivalent" means a benefit that, at the time it is entered upon, has the same present value as the benefit it replaces, based on interest and on a mortality table recommended by the actuary and adopted by the board of trustees.

(2) "Annual compensation" means the compensation that is paid to an employee of a participating subdivision by the subdivision that does not exceed the rate of compensation fixed by the subdivision governing body as the maximum compensation for a year on which contributions by the employee to the retirement system may be based.

(3) "Annuity" means an amount of money payable in equal monthly installments at the end of each month for a period determined under this subtitle.

(4) "Board of trustees" means the persons appointed under this subtitle to administer the retirement system.

(5) "Compensation" means the payments made to an employee of a participating subdivision by the subdivision for service, including nonmonetary compensation, the value of which is determined by the governing body of the subdivision.

(6) "Employee" means a person who is certified by a subdivision as being employed in, or elected or appointed to, a position or office in the subdivision that normally

requires services from the person for not less than 900 hours a year and for which the person is compensated by the subdivision. The term includes a person employed on a probationary basis except as provided by Section 842.107(c) [52.107(e) of this subtitle].

(7) "Governing body" means the commissioners court of a county or, in any other subdivision, the body that is authorized to raise and expend revenue.

(8) "Initial deposit rate" means the percentage of the annual compensation of an employee of a participating subdivision that is required by the subdivision on the effective date of subdivision participation in the retirement system as the rate for employee contributions to the retirement system.

(9) "Local pension system" means a public retirement benefit program of less than statewide scope.

(10) "Retirement" means the withdrawal from service with a retirement benefit granted under this subtitle.

(11) "Retirement system" means the Texas County and District Retirement System.

(12) "Service" means the time a person is an employee.

(13) "Credited service" means the number of months of prior and current service ascribed to a member in the retirement system or included in a prior service certificate in effect for the member.

(14) "Subdivision" means a county, a political unit that consists of all of the geographical area of one county or of all or part of more than one county, a political unit of a county that has taxing authority, the Texas Association of Counties, the Texas County and District Retirement System, or a city and county that jointly operate a city-county hospital under Chapter 383, Acts of the 48th Legislature, Regular Session, 1943 (Article 4494i, Vernon's Texas Civil Statutes), but does not include an incorporated city or town, a school district, or a junior college district.

Sec. 841.002 [51.002]. PURPOSE OF SUBTITLE. The purpose of this subtitle is to establish a program of benefits for members, retirees, and their beneficiaries and to establish rules for the management and operation of the retirement system.

Sec. 841.003 [51.003]. RETIREMENT SYSTEM. The Texas County and District Retirement System is continued in existence and is the name by which the business of the retirement system shall be transacted, all its funds invested, and all its cash and other property held.

Sec. 841.004 [51.004]. POWERS AND PRIVILEGES. The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

Sec. 841.005 [51.005]. ACTION FOR ACCOUNTING. (a) The retirement system or the board of trustees may initiate, or cause to be initiated on its behalf, an action against a participating subdivision, a board of the subdivision, or individual officers of the subdivision, to compel an accounting of sums due to the retirement system or to require the withholding and accounting of sums due from members.

(b) The venue of an action brought under this section is in either Travis County or a county in which the subdivision is situated.

Sec. 841.006 [51.006]. EXEMPTION FROM EXECUTION. All retirement annuity payments, other benefit payments, and a member's accumulated contributions are unassignable and are exempt from execution, garnishment, attachment, and state and local taxation.

Sec. 841.007 [51.007]. REDUCTION OF ANNUITY PAYMENTS ON REQUEST. (a) An annuitant by written request may authorize the retirement system to reduce the annuitant's monthly payment to an amount specified in the request. In writing, the annuitant may subsequently request the retirement system to increase the annuitant's monthly payment to any specified amount that does not exceed the amount payable if a reduction had never been requested.

(b) If the retirement system receives a request under Subsection (a) ~~[of this section]~~, the director may cause the monthly annuity payment of the requesting annuitant to be reduced or increased as specified in the request.

(c) Any amounts by which an annuity is reduced under this section are forfeited to the retirement system and are not recoverable by any person.

Sec. 841.008 ~~[51.008]~~. APPLICATIONS BY, AND PAYMENTS TO, PERSONS OTHER THAN THE MEMBER. (a) The board of trustees may accept an application for any benefit under this subtitle *that* ~~[which]~~ is signed on behalf of the member by:

(1) a duly appointed guardian of the person and estate of the member; or

(2) a person authorized to act *on* ~~[in]~~ behalf of the member by a written power of attorney that provides that the power is not revoked by disability of the member, except that ~~[such]~~ an attorney in fact may not select a benefit in which the attorney in fact is a named beneficiary, unless the attorney in fact is the spouse of the member.

(b) If it is ~~[be]~~ made to appear to the director by affidavit of a duly licensed physician that a member is not mentally capable of managing *the member's* ~~[his- or -her]~~ own affairs and if it is further established to the satisfaction of the director ~~that~~ the estate of the member is insufficient to justify the expense of guardianship, the director may make payment of any annuity or other benefit:

(1) to the spouse of the member, as trustee for the member; or

(2) if there *is* ~~[be]~~ no spouse, to a person actually providing for the needs of and caring for the member, as trustee for the member.

(c) The director may require proof of such facts by evidence satisfactory to *the director* ~~[him]~~.

Sec. 841.009 ~~[51.009]~~. DIVORCE-DECREE PAYMENTS PROTECTED. The system and officials of the system *are* ~~[shall]~~ not ~~[be]~~ liable to any person for making payments of any benefits in accordance with the provisions of a decree of divorce in a cause in which the member or annuitant was a party.

[Sections 841.010–841.100 ~~[51.010–51.100]~~ reserved for expansion]

#### SUBCHAPTER B. PENAL PROVISIONS

Sec. 841.101 ~~[51.101]~~. OFFENSES; PENALTY. (a) A person commits an offense if the person knowingly makes a false statement in a report or application to the retirement system in an attempt to defraud the retirement system.

(b) A person commits an offense if the person knowingly makes a false certificate of an official report to the retirement system.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000, by confinement in jail for not less than 30 days nor more than one year, or both.

## CHAPTER 842 [52]. MEMBERSHIP

## SUBCHAPTER A. SUBDIVISION PARTICIPATION

## Sec. 842.001 [52.001]. SUBDIVISION PARTICIPATION

## Sec. 842.002 [52.002]. RULES FOR PARTICIPATING SUBDIVISIONS

## Sec. 842.003 [52.003]. ADDITIONAL MEMBERSHIP CLASSES

## Sec. 842.004 [52.0031]. SUPPLEMENTAL DEATH BENEFITS FUND

## Sec. 842.005 [52.004]. TERMINATION OF SUBDIVISION PARTICIPATION

## Sec. 842.006 [52.005]. MERGER

[Sections 842.007–842.100 [52.006–52.100] reserved for expansion]

## SUBCHAPTER B. MEMBERSHIP

## Sec. 842.101 [52.101]. GENERAL MEMBERSHIP REQUIREMENT

## Sec. 842.102 [52.102]. ELECTION TO BECOME MEMBER

## Sec. 842.103 [53.103]. CREDIT FOR PERSON WHO ELECTS TO BECOME MEMBER

## Sec. 842.104 [53.104]. COUNTY HOSPITAL EMPLOYEES

## Sec. 842.105 [52.105]. STATUS AS AN EMPLOYEE

## Sec. 842.106 [52.106]. MULTIPLE RETIREMENT SYSTEM MEMBERSHIP

## Sec. 842.107 [52.107]. EXCEPTION TO GENERAL MEMBERSHIP REQUIREMENT

## Sec. 842.108 [52.108]. WITHDRAWAL OF CONTRIBUTIONS

## Sec. 842.109 [52.109]. TERMINATION OF MEMBERSHIP

## Sec. 842.110 [52.110]. RESUMPTION OF SERVICE BY RETIREE

[Sections 842.111–842.200 [52.111–52.200] reserved for expansion]

## SUBCHAPTER C. OPTIONAL MEMBERSHIP COVERAGE

## Sec. 842.201 [52.201]. OPTIONAL MEMBERSHIP CLASS

## Sec. 842.202 [52.202]. WAIVER OF MEMBERSHIP

## Sec. 842.203 [52.203]. SUBSEQUENT ELECTION TO BECOME MEMBER

## CHAPTER 842 [52]. MEMBERSHIP

## SUBCHAPTER A. SUBDIVISION PARTICIPATION

Sec. 842.001 [52.001]. SUBDIVISION PARTICIPATION. (a) A subdivision, in the manner required for official actions of the subdivision, may elect to join the retirement system and be subject to the provisions of this subtitle.

(b) The governing body of a subdivision shall notify the board of trustees of an election under this section before the 11th day after the date of election.

(c) A political subdivision other than a county may participate in the retirement system only upon approval of the board of trustees of the system.

(d) Subject to the approval of the board of trustees, an electing subdivision under this section may begin participation in the retirement system on the first day of any month designated by the subdivision's governing body.

Sec. 842.002 [52.002]. RULES FOR PARTICIPATING SUBDIVISIONS. The board of trustees may adopt rules concerning:

(1) notices, information, and reports the board of trustees requires from a subdivision that elects to participate in the retirement system; and

(2) the time that a subdivision that elects to participate in the retirement system may begin participation.

Sec. 842.003 [52.003]. **ADDITIONAL MEMBERSHIP CLASSES.** If a class of employees becomes eligible for membership in the retirement system as a result of amendment of this subtitle after a subdivision has elected to participate, the subdivision may include that class as members of the retirement system on the same terms as are applicable to employees eligible for optional coverage under Subchapter C ~~[of this chapter]~~.

Sec. 842.004 [52.004]. **SUPPLEMENTAL DEATH BENEFITS FUND.** (a) If a subdivision is participating in the retirement system on a full-salary basis, the subdivision may elect to participate in the supplemental death benefits fund.

(b) A subdivision that elects to participate in the fund may elect coverage providing postretirement death benefits in addition to coverage providing in-service death benefits.

(c) Before a subdivision that has fewer than 10 employees who are members of the retirement system is permitted to participate in the fund, the board of trustees may require the subdivision to provide evidence that is satisfactory to the board that the members are in good health.

(d) A subdivision that elects to participate in the fund after the operative date of the fund may begin participation on the first day of any month after the month in which the subdivision gives notice of its election to the board of trustees.

(e) If a subdivision has previously discontinued participation in the fund, the board of trustees in its discretion may restrict the right of the subdivision to participate again.

Sec. 842.005 [52.005]. **TERMINATION OF SUBDIVISION PARTICIPATION.** (a) A subdivision may not terminate participation in the retirement system if it has employees who are members, but it may elect to discontinue participation in the retirement system of nonmembers whose employment or reemployment begins after the date of an election to discontinue.

(b) If before November 1 of any year a subdivision gives written notice of its intention to the retirement system, the subdivision may terminate coverage under, and discontinue participation in, the supplemental death benefits fund. A termination under this subsection is effective on January 1 of the year following the year in which notice is given.

(c) If a participating subdivision is abolished so that it no longer contributes to the system and no other participating subdivision has assumed funding of the obligations, if a participating subdivision elects to discontinue enrollment in the system of nonmembers whose employment begins after the date of an election to discontinue, or if a participating subdivision reduces the number of members in its employment by at least 80 percent from the number of members in its employment during the preceding year and no other participating subdivision has assumed funding of the obligations, the assets in that subdivision's account in the subdivision accumulation fund shall be allocated under the ~~[following]~~ priorities *provided by this section*, with the details of the allocation to be prescribed by the board of trustees.~~[:]~~

(d) ~~[(1)]~~ First priority shall be given to current service credit of all members who leave their contributions in the system. Service retirement will be allowed at age 60 regardless of length of credited service. If the ratio of the sum of the available tangible assets and the actuarial present value of future subdivision contributions in excess of normal costs, if any, to the actuarial present value of current service credits is less than 1.00, then the credits will have to be proportionally reduced. The ratio will be redetermined annually and adjustments made as needed.

(e) ~~[(2)]~~ Second priority shall be given to prior service credit, prior service annuities, multiple matching credit, and multiple matching annuities, without differentiation. If the ratio of the sum of the available tangible assets for this priority group and the available actuarial present value of future subdivision contributions in excess of normal costs, if any, to the actuarial present value of benefits is less than 1.00, then the annuities and credits will have to all be proportionally reduced. If the ratio is greater than 1.00, then



the annuities will all have to be proportionally increased. The ratio will be redetermined annually and adjustments made as needed.

Sec. 842.006 [52.005]. **MERGER.** A local pension system established for employees of a subdivision may merge into the retirement system on conditions prescribed by the board of trustees.

[Sections 842.007–842.100 [52.006–52.100] reserved for expansion]

#### SUBCHAPTER B. MEMBERSHIP

Sec. 842.101 [52.101]. **GENERAL MEMBERSHIP REQUIREMENT.** (a) Except as otherwise provided by this subchapter, a person who is not a member becomes a member of the retirement system if:

(1) on the date the subdivision's participation in the retirement system becomes effective, the person is a subdivision employee;

(2) before September 1, 1987, and after the date the subdivision's participation in the retirement system became effective, the person became a subdivision employee and was less than 60 years old at the time of employment; or

(3) after August 31, 1987, and after the date the subdivision's participation becomes effective, the person becomes a subdivision employee.

(b) A person to whom Subsection (a)(1) [of this section] applies becomes a member of the retirement system on the date the subdivision's participation becomes effective, and a person to whom Subsection (a)(2) or (a)(3) [of this section] applies becomes a member of the retirement system on the first day of the person's employment. A person who heretofore became a member pursuant to Subsection (a)(2) [of this section] on the first day of the month subsequent to the month of employment and who did not receive credit for the initial month of employment may obtain credit for the month preceding the date of membership by depositing with the system for credit to the member's [his or her] individual account the amount that would have been deducted as the member contribution had the person become a member on the date of employment.

Sec. 842.102 [52.102]. **ELECTION TO BECOME MEMBER.** An employee of a participating subdivision who was not required to become a member of the retirement system at the time of employment may elect to become a member by filing a written application for membership with the person's employer and with the director. Membership begins on the first day of the calendar month that begins after the date the application is filed.

Sec. 842.103 [52.103]. **CREDIT FOR PERSON WHO ELECTS TO BECOME MEMBER.** A person who becomes a member of the retirement system under Section 842.102 [52.102 of this subtitle] may not receive credit for service performed before membership except as provided by Section 843.102(a)(2) [53.102(a)(2) of this subtitle].

Sec. 842.104 [52.104]. **COUNTY HOSPITAL EMPLOYEES.** (a) If a county elects to participate in the retirement system, the commissioners court of the county may elect to deny membership to the employees of a county hospital governed by Chapter 5, Title 71, Revised [Civil] Statutes [of Texas, 1925].

(b) After making an election under this section, the commissioners court may at any time reverse its decision and require that county hospital employees become members on a date fixed by order of the commissioners court.

(c) If the commissioners court reverses an election under this section and requires the employees of a county hospital to become members of the retirement system, for the purposes of this subtitle the employees of the county hospital comprise a separate subdivision from other county employees.

Sec. 842.105 [52.105]. **STATUS AS AN EMPLOYEE.** For the purposes of this subtitle, a person has the standing of an employee in a participating subdivision if the person:

(1) is employed in a position that normally requires services from the person for not less than 900 hours a year by a judicial district probation department that has executed

a contract with the participating subdivision under Article 42.12, Code of Criminal Procedure~~[-1965]~~; or

(2) is eligible for optional membership in the retirement system under Subchapter C ~~[of this chapter]~~.

Sec. ~~842.106~~ [52.106]. **MULTIPLE RETIREMENT SYSTEM MEMBERSHIP.** (a) Except as provided ~~by~~ [in] this section, a person is not an employee eligible for membership and is not eligible to receive credit in this retirement system for service performed that makes a person eligible for membership or is creditable in another pension fund or retirement system that is at least partly supported at public expense.

(b) A person may simultaneously be a member of, and receive credit for service performed during the same period in the retirement system, the federal program providing old age and survivors insurance, and either the Judicial Retirement System of Texas Plan One or the Judicial Retirement System of Texas Plan Two.

Sec. ~~842.107~~ [52.107]. **EXCEPTION TO GENERAL MEMBERSHIP REQUIREMENT.** (a) If on the date a subdivision's participation in the retirement system becomes effective a person has a basis of employment with the subdivision that would be violated by a membership requirement of this subchapter, the person may elect not to become a member of the retirement system.

(b) If a person qualified to make an election under this section has been notified that the subdivision will begin participation in the retirement system, the person is considered to have elected membership in the retirement system unless before the date the subdivision's participation becomes effective the person files with the governing body of the subdivision written notice of an election not to become a member.

(c) A subdivision that was participating in the retirement system before January 1, 1987, and that had in effect before that date and continues to have a policy of hiring new personnel on a probationary basis for a specified period may exclude new personnel from membership during the probationary period but may not, for purposes of retirement system membership, increase the length of the probationary period beyond the length of the period in effect on January 1, 1987. The subdivision may reduce or eliminate the period.

Sec. ~~842.108~~ [52.108]. **WITHDRAWAL OF CONTRIBUTIONS.** A person who is not an employee of any participating subdivision and who has not retired may, after application, withdraw all of the accumulated contributions credited to the person's individual account in the employees saving fund, and the retirement system shall close the account.

Sec. ~~842.109~~ [52.109]. **TERMINATION OF MEMBERSHIP.** (a) A person terminates membership in the retirement system by:

- (1) death;
- (2) retirement;
- (3) withdrawal of all of the person's contributions while absent from service; or
- (4) absence from service for five consecutive years or more either before accumulating enough credited service to enable the person to retire without additional service or before accumulating four or more years of credited service with one or more subdivisions that have adopted a program allowing retirement without additional service after accumulation of 12 years of credited service.

(b) A member of the retirement system is not absent from service and continues to accumulate membership credited service if at any time during a declared or undeclared war involving the United States, during a conflict between the armed forces of the United States and the armed forces of a foreign country, or before the first anniversary of the last day of the war or conflict, the person:

- (1) performs active duty service in the armed forces of the United States or their auxiliaries;
- (2) performs active duty service in the armed forces reserve of the United States or their auxiliaries;

(3) performs service in the American Red Cross; or

(4) is conscripted and performs war-related service.

(c) On any termination of membership in the retirement system, a person forfeits all credited service established in the retirement system.

Sec. ~~842.110~~ [52.110]. RESUMPTION OF SERVICE BY RETIREE. A person who has retired under this subtitle because of service may not rejoin the retirement system or earn additional retirement benefits by reason of subsequent employment.

[Sections ~~842.111–842.200~~ [52.111–52.200] reserved for expansion]

#### SUBCHAPTER C. OPTIONAL MEMBERSHIP COVERAGE

Sec. ~~842.201~~ [52.201]. OPTIONAL MEMBERSHIP CLASS. (a) The commissioners court of a county that participates in the retirement system and that uses county funds to pay supplemental compensation to those persons who regularly perform the duties of an elected or appointed state or district office, who also receive compensation from the state, may by order make those persons eligible, to the extent of the compensation paid by the county, for membership in the retirement system.

(b) Unless membership is waived, a person who is made eligible for membership in the retirement system under Subsection (a) [~~of this section~~] becomes a member on the date specified in the order of the commissioners court.

(c) If, after the effective date of an order under Subsection (a) [~~of this section~~] and on or after *May 6, 1987* [~~the effective date of the 1987 amendment of this subsection~~], a person is employed for the first time by the county in a position described by Subsection (a) [~~of this section~~], the person becomes a member of the retirement system on the date the person's employment begins

Sec. ~~842.202~~ [52.202]. WAIVER OF MEMBERSHIP. (a) A person who is eligible under Section ~~842.201(a)~~ [52.201(a) ~~of this subtitle~~] to become a member of the retirement system on the effective date of the commissioners court order may elect to waive membership.

(b) The board of trustees may prescribe the form of a membership waiver under this section, which must be in writing and filed with the director within 30 days after the date specified in an order under Section ~~842.201(a)~~ [52.201(a) ~~of this subtitle~~].

Sec. ~~842.203~~ [52.203]. SUBSEQUENT ELECTION TO BECOME MEMBER. (a) A person who has filed a waiver under Section ~~842.202~~ [52.202 ~~of this subtitle~~] may thereafter become a member of the retirement system, if the person meets the requirements for membership that are applicable to new employees of the subdivision at the time that the person applies for membership that was previously waived. Application for membership under this section must be on a form prescribed by the board of trustees.

(b) The effective date of membership applied for under this section is the first day of the first month after the month in which the application is filed, and no credit in the retirement system may be given for any type of service prior to that effective date.

CHAPTER 843 [53]. CREDITABLE SERVICE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 843.001 [53.001]. TYPES OF CREDITABLE SERVICE

Sec. 843.002 [53.002]. BENEFIT ELIGIBILITY BASED ON CREDITED SERVICE

Sec. 843.003 [53.003]. CREDITED SERVICE PREVIOUSLY FORFEITED

[Sections 843.004–843.100 [53.004–53.100] reserved for expansion]

SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE GENERALLY

Sec. 843.101 [53.101]. CREDITABLE PRIOR SERVICE

Sec. 843.102 [53.102]. ELIGIBILITY FOR PRIOR SERVICE

Sec. 843.103 [53.103]. STATEMENT OF PRIOR SERVICE

Sec. 843.104 [53.104]. CERTIFICATION OF SERVICE AND  
AVERAGE COMPENSATION

Sec. 843.105 [53.105]. DETERMINATION OF ALLOCATED  
PRIOR SERVICE CREDIT

Sec. 843.106 [53.106]. PRIOR SERVICE CERTIFICATE

Sec. 843.107 [53.107]. VOID PRIOR SERVICE CERTIFICATE

[Sections 843.108–843.200 [53.108–53.200] reserved for expansion]

SUBCHAPTER C. OPTIONAL PRIOR SERVICE

Sec. 843.201 [53.201]. SERVICE FOR CERTAIN PUBLIC FACILITIES

Sec. 843.202 [53.202]. PRIOR MILITARY SERVICE

Sec. 843.203 [53.203]. ADJUSTMENT OF OBLIGATIONS BETWEEN  
SUCCESSIVE EMPLOYERS

[Sections 843.204–843.300 [53.204–53.300] reserved for expansion]

SUBCHAPTER D. PRIOR SERVICE OF OPTIONAL MEMBERSHIP CLASS

Sec. 843.301 [53.301]. MEMBER FROM COUNTY WITH LOCAL PENSION SYSTEM

Sec. 843.302 [53.302]. MEMBER FROM COUNTY WITHOUT  
LOCAL PENSION SYSTEM

Sec. 843.303 [53.303]. MEMBER NOT ENTITLED TO PRIOR SERVICE CREDIT

Sec. 843.304 [53.304]. CERTIFICATION OF SERVICE AND AVERAGE COMPENSA-  
TION; DETERMINATION OF ALLOCATED LOCAL SERVICE CREDIT

[Sections 843.305–843.400 [53.305–53.400] reserved for expansion]

SUBCHAPTER E. ESTABLISHMENT OF CURRENT SERVICE

Sec. 843.401 [53.401]. CURRENT SERVICE GENERALLY

Sec. 843.402 [53.402]. CURRENT SERVICE FOR MEMBER OF OPTIONAL CLASS

Sec. 843.403 [53.403]. DETERMINATION OF CURRENT SERVICE CREDIT  
AND MATCHING CREDIT

[Sections 843.404–843.500 [53.404–53.500] reserved for expansion]

SUBCHAPTER F. CURRENT SERVICE FOR LEGISLATIVE SERVICE

Sec. 843.501 [53.501]. LEGISLATIVE SERVICE

[Sections 843.502–843.600 [53.502–53.600] reserved for expansion]

SUBCHAPTER G. OPTIONAL CURRENT SERVICE

Sec. 843.601 [53.601]. CURRENT SERVICE FOR MILITARY DUTY

[Sections 843.602–843.700 [53.603–53.700] reserved for expansion]

#### SUBCHAPTER H. OPTIONAL INCREASES IN SERVICE CREDITS

Sec. 843.701 [53.701]. INCREASE IN PRIOR SERVICE CREDITS

Sec. 843.702 [53.702]. RECOMPUTATION OF SERVICE CREDITS

Sec. 843.703 [53.703]. INCREASE IN MULTIPLE MATCHING CREDITS

### CHAPTER 843 [53]. CREDITABLE SERVICE

#### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 843.001 [53.001]. TYPES OF CREDITABLE SERVICE. The types of service creditable as credited service in the retirement system are prior service and current service.

Sec. 843.002 [53.002]. BENEFIT ELIGIBILITY BASED ON CREDITED SERVICE. A member's eligibility to receive a benefit is based on credited service at the time of retirement.

Sec. 843.003 [53.003]. CREDITED SERVICE PREVIOUSLY FORFEITED. (a) An eligible member who has withdrawn contributions from the retirement system may reestablish the forfeited credit in the system if the service on which the credit was based was performed for a participating subdivision the governing body of which by order authorizes reestablishment of the credit by eligible employee members of the subdivision.

(b) A member eligible to reestablish credit under this section is one who:

(1) was a member on the effective date of an order made under Subsection (a) [~~of this section~~]; and

(2) has, since resuming membership, at least 24 consecutive months of service as an employee of the subdivision for which the order was made.

(c) A member eligible under this section may reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from the system, plus a withdrawal charge computed at an annual rate of five percent from the date of withdrawal to the date of redeposit.

(d) A governing body may not make an order under Subsection (a) [~~of this section~~] unless the actuary first determines that reestablishment of forfeited credit service would not impair the ability of the subdivision to pay all obligations charged against its account in the subdivision accumulation fund before the later of:

(1) the 30th anniversary of its effective date of participation; or

(2) the 30th anniversary of the date of the valuation that is the basis of the subdivision's latest increase in benefits or coverage in accordance with Section 844.201 or 844.207 [~~54.201 or Section 4.207 of this subtitle~~].

[Sections 843.004–843.100 [53.004–53.100] reserved for expansion]

#### SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE GENERALLY

Sec. 843.101 [53.101]. CREDITABLE PRIOR SERVICE. Prior service creditable in the retirement system is service performed as an employee of a participating subdivision before the date the subdivision's participation in the retirement system became effective.

Sec. 843.102 [53.102]. ELIGIBILITY FOR PRIOR SERVICE. (a) A member is eligible to receive credit in the retirement system for prior service if the member:

(1) became a member as an employee of a subdivision on the effective date of the subdivision's participation in the retirement system; or

(2) became a member as an employee of a subdivision before the fifth anniversary of the effective date of its participation and continues as an employee of the subdivision for at least five consecutive years after reemployment.

(b) The board of trustees may adopt rules concerning eligibility for prior service under Subsection (a) ~~[of this section]~~.

Sec. 843.103 ~~[53.103]~~. STATEMENT OF PRIOR SERVICE. A member claiming credit for prior service shall file a detailed statement of the service with the treasurer or other disbursing officer of the subdivision for which the service was performed.

Sec. 843.104 ~~[53.104]~~. CERTIFICATION OF SERVICE AND AVERAGE COMPENSATION. (a) As soon as practicable after a member files a statement of prior service under Section 843.103 ~~[53.103 of this subtitle]~~, the subdivision employing the officer receiving the statement shall verify the prior service claimed and certify to the board of trustees the amount of service approved and the member's average prior service compensation.

(b) Except as provided by Subsection (c) ~~[of this section]~~, the average prior service compensation of a member is computed as the average monthly compensation for service performed for the subdivision:

(1) for the 36 months immediately preceding the effective date of the subdivision's participation in the retirement system; or

(2) if the member did not perform service in each of the 36 months immediately preceding participation, for the number of months of service within the 36-month period.

(c) In a computation of average prior service compensation for service performed for a subdivision whose retirement system participation began before January 1, 1978, monthly compensation is excluded to the extent that it exceeds the lower of the following rates of compensation:

(1) the annual compensation for member contributions as determined by the subdivision governing body at the time of its election to participate in the retirement system; or

(2) annual compensation of \$12,000.

(d) The board of trustees may adopt rules concerning verification and certification of service and compensation under this section.

Sec. 843.105 ~~[53.105]~~. DETERMINATION OF ALLOCATED PRIOR SERVICE CREDIT. (a) After receiving a certification of prior service and average prior service compensation under Section 843.104 ~~[53.104 of this subtitle]~~, the board of trustees shall determine the member's maximum and allocated prior service credits.

(b) The maximum prior service credit is an amount equal to the accumulation at interest of a series of equal monthly amounts for the number of months of approved prior service. Each monthly amount equals twice the subdivision's initial deposit rate, times the member's average prior service compensation. Interest is allowed at the end of each 12-month period on an accumulated amount at the beginning of each period and is credited only for each whole 12-month period. The rate of interest allowed on a maximum prior service credit granted by a subdivision having an effective date of participation in the retirement system after December 31, 1981, is three percent a year.

(c) The allocated prior service credit is the percentage of the maximum prior service credit granted by the subdivision to all members who performed prior service for the subdivision. The total allocated prior service credits for members claiming prior service with the subdivision may not exceed an amount for which the prospective subdivision contributions to the retirement system will be adequate to amortize, before the 30th anniversary of the effective date of subdivision participation in the retirement system:

(1) all obligations charged to its account in the subdivision accumulation fund; and

(2) all basic and supplemental annuities derived from credits granted by the subdivision.

(d) Interest is earned for each whole year on an allocated prior service credit from the effective date of membership to the effective date of retirement at the applicable rate for the period as provided by Section 845.314 ~~[55.313 of this subtitle]~~.

Sec. 843.106 [53.106]. PRIOR SERVICE CERTIFICATE. (a) After determining a member's allocated prior service credit under Section 843.105 [53.105 of this subtitle], the board of trustees shall issue to the member a prior service certificate stating:

- (1) the number of months of prior service credited;
- (2) the average prior service compensation; and
- (3) the allocated prior service credit.

(b) As long as a person remains a member, the person's prior service certificate is, for purposes of retirement, conclusive evidence of the information it contains, except that a member or participating subdivision may, before the first anniversary of its issuance or modification, request the board of trustees to modify the certificate.

Sec. 843.107 [53.107]. VOID PRIOR SERVICE CERTIFICATE. (a) When a person terminates membership in the retirement system, any prior service certificate issued to the person becomes void.

(b) A person who has terminated membership and subsequently resumes membership in the retirement system is not entitled to credit for prior service.

[Sections 843.108–843.200 [53.108–53.200] reserved for expansion]

#### SUBCHAPTER C. OPTIONAL PRIOR SERVICE

Sec. 843.201 [53.201]. SERVICE FOR CERTAIN PUBLIC FACILITIES. (a) The governing body of a participating subdivision by order may authorize the establishment of prior service credit in the retirement system for service performed in a public hospital, utility, or other public facility during a time the facility was operated by a unit of government other than the subdivision and before:

- (1) the effective date of the subdivision's participation in the retirement system, if the facility was acquired by the subdivision before that date; or
- (2) the date of acquisition of the facility, if the facility was acquired after the effective date of the subdivision's participation in the retirement system.

(b) A member eligible to establish credit under this section after an order under Subsection (a) [of this section] is one who was employed by a public facility:

- (1) on the effective date of subdivision participation, for service under Subsection (a)(1) [of this section]; or
- (2) on the date of acquisition of the facility, for service under Subsection (a)(2) [of this section].

(c) Credit under this section is computed and limited in the same manner as is prior service credit of employees of other departments of the participating subdivision for equivalent periods of service.

Sec. 843.202 [53.202]. PRIOR MILITARY SERVICE. (a) The governing body of a participating subdivision may authorize the establishment of credit for prior service in the retirement system by eligible members who have performed military service creditable as provided by this section.

(b) Military service creditable under this section is active federal duty as a member of the armed forces of the United States during a time that the United States is or was engaged in organized conflict with foreign forces, whether a state of war or a police action. A member may not establish more than 36 months of credited service under this section for military service.

(c) A member eligible to establish credit under this section is one who:

- (1) was an employee of the subdivision immediately before beginning military service;
- (2) began military service without intervening employment; and
- (3) returned to employment with the subdivision before the 181st day after the date of the member's discharge or release from active military duty.

(d) The governing body of a subdivision may not authorize the establishment of credited service under this section except on the terms provided by Section ~~844.201~~ [54.201 of this subtitle].

Sec. ~~843.203~~ [53.203]. ADJUSTMENT OF OBLIGATIONS BETWEEN SUCCESSIVE EMPLOYERS. The governing body of a subdivision ~~that~~ [which] has taken over the facilities of a hospital, utility, or other public facility ~~formerly~~ [theretofore] operated by another participating subdivision[,] may assume in whole or in part the obligations ~~that~~ [which] the former employer had undertaken under this subtitle by reason of service performed by members of the system who become employees of the subdivision seeking to participate in the system. A subdivision [now] participating in the system ~~that~~ [which] could have assumed the obligations of another subdivision had this section been in effect at time of [participation] [,] may assume in whole or in part the obligations ~~that~~ [which] the subdivision ~~that~~ [which] was the first employer had undertaken by reason of service rendered by members who became employees of the subdivision ~~that~~ [which] is the second employer. Assumptions under this section shall be by written agreement between the affected subdivisions and ~~are~~ [shall be] subject to approval of the board of trustees.

[Sections ~~843.204-843.300~~ [53.204-53.300] reserved for expansion]

#### SUBCHAPTER D. PRIOR SERVICE OF OPTIONAL MEMBERSHIP CLASS

Sec. ~~843.301~~ [53.301]. MEMBER FROM COUNTY WITH LOCAL PENSION SYSTEM. (a) A person who becomes a member of the retirement system under Section ~~842.201~~ [52.201 of this subtitle], as an employee of a subdivision that operated a local pension system before merging it into the retirement system may establish prior service credit in the retirement system for service performed for the subdivision before the effective date of merger.

(b) A member claiming credit under this section shall establish current service credit under Section ~~843.402~~ [53.402 of this subtitle] and shall deposit with the retirement system, before the 91st day after the effective date of an order made under Section ~~842.201(a)~~ [52.201(a) of this subtitle], for the total number of months claimed under this section, an amount equal to the amount of total deposits that a member of the local pension system earning the same compensation during the same period was required to make to the local system.

(c) If a member makes a deposit under Subsection (b) [of this section], the subdivision shall deposit with the retirement system, within the period required under this section for member deposits, an amount equal to the amount deposited under Subsection (b), and the retirement system shall grant the member prior service credit under this section.

Sec. ~~843.302~~ [53.302]. MEMBER FROM COUNTY WITHOUT LOCAL PENSION SYSTEM. (a) A person who becomes a member of the retirement system under Section ~~842.201~~ [52.201 of this subtitle] as an employee of a county that did not operate a local pension system before the effective date of the county's participation in the retirement system may establish prior service credit in the retirement system for service performed for the county before the effective date of county participation.

(b) A member may establish credit under this section by establishing current service credit under Section ~~843.402~~ [53.402 of this subtitle].

Sec. ~~843.303~~ [53.303]. MEMBER NOT ENTITLED TO PRIOR SERVICE CREDIT. A person who becomes a member of the retirement system under Section ~~842.203~~ [52.203 of this subtitle] is not entitled to credited service in the retirement system for service performed before the date the person's membership begins.

Sec. ~~843.304~~ [53.304]. CERTIFICATION OF SERVICE AND AVERAGE COMPENSATION; DETERMINATION OF ALLOCATED LOCAL SERVICE CREDIT. (a) A member claiming credit for prior service under this subchapter shall file a statement of prior service in the manner required by Section ~~843.103~~ [53.103 of this subtitle].

(b) After a member described in Section ~~843.301(a)~~ [53.301(a) of this subtitle] files a statement of prior service, the subdivision employing the officer receiving the statement



shall certify to the board of trustees the amount of prior service approved and the average local compensation, determined in the manner provided for computing the average local compensation for employees of the subdivision who became members on the effective date of merger of the local pension system into the retirement system. After the board of trustees receives a certification under this subsection, it shall determine the maximum and allocated local service credits for the member in the manner and using the percentages provided for employees of the subdivision who became members on the effective date of merger.

(c) After a member described in Section 843.302 ~~[53.302 of this subtitle]~~ files a statement of prior service, the subdivision employing the officer receiving the statement shall certify to the board of trustees the amount of prior service approved and the average monthly compensation paid by the subdivision, determined in the manner provided for computing the average prior service compensation for employees of the subdivision who became members on the effective date of subdivision participation in the retirement system. After the board of trustees receives a certification under this subsection, it shall determine the maximum and allocated prior service credits for the member in the manner and using the percentages provided for computing the maximum and allocated prior service credits for employees of the subdivision who became members on the effective date of subdivision participation.

[Sections 843.305–843.400 ~~[53.305–53.400]~~ reserved for expansion]

#### SUBCHAPTER E. ESTABLISHMENT OF CURRENT SERVICE

Sec. 843.401 ~~[53.401]~~. CURRENT SERVICE GENERALLY. Service that is performed while a member as an employee of a participating subdivision is credited in the retirement system for each month for which the required contributions are made by the member and the employing subdivision.

Sec. 843.402 ~~[53.402]~~. CURRENT SERVICE FOR MEMBER OF OPTIONAL CLASS.  
(a) A person who becomes a member of the retirement system under Section 842.201 ~~[52.201 of this subtitle]~~ may establish current service credit in the retirement system for service performed for the subdivision for the period beginning on the effective date of the subdivision's participation in the retirement system and ending on the day before the date of an order made under Section 842.201(a) ~~[52.201(a) of this subtitle]~~.

(b) A member claiming credit under this section shall deposit with the retirement system, before the 91st day after the effective date of an order made under Section 842.201(a) ~~[52.201(a) of this subtitle]~~, for the total number of months of service claimed under this section, an amount equal to the amount of deposits that a member earning the same compensation from the subdivision during the same period was required to make to the retirement system.

(c) If the subdivision deposits with the retirement system, within the period required under this section for member deposits, an amount equal to the amount deposited under Subsection (b) ~~[of this section]~~, the retirement system shall grant the member current service credit under this section.

Sec. 843.403 ~~[53.403]~~. DETERMINATION OF CURRENT SERVICE CREDIT AND MATCHING CREDIT. (a) As soon as practicable after the end of each calendar year, the board of trustees shall determine a member's current service credit and multiple matching credit.

(b) The current service credit of a member is an amount equal to a percentage of the accumulated contributions made by the member to the retirement system during a calendar year. The percentage is determined by the governing body of the employing subdivision at the time of its election to participate in the retirement system, except that the percentage for a subdivision that begins participation after December 31, 1977, is 100 percent.

(c) The multiple matching credit of a member is an amount equal to a percentage of the accumulated contributions made by the member to the retirement system during a calendar year. The percentage is 0 percent until a greater percentage is adopted as

provided by Section ~~843.709~~ ~~[53.703 of this subtitle]~~ or, for a subdivision whose participation in the retirement system began after October 31, 1980, unless a greater percentage is adopted by its governing body before the first anniversary of the subdivision's effective date of retirement system participation, after the actuary has determined and certified that the greater percentage would not impair the ability of the subdivision to amortize, before the 30th anniversary of the participation date, all obligations that are charges against its account in the subdivision accumulation fund. A multiple matching credit includes any portion of a current service credit in effect on January 1, 1978, that exceeds the member's current service credit determined under Subsection (b) ~~[of this section]~~.

(d) Interest is earned for each whole calendar year on a current service credit or multiple matching credit from the end of each calendar year to the effective date of the member's retirement at the rate credited annually to a member's individual account in the employees saving fund.

[Sections ~~843.404-843.500~~ ~~[53.404-53.500]~~ reserved for expansion]

#### SUBCHAPTER F. CURRENT SERVICE FOR LEGISLATIVE SERVICE

Sec. ~~843.501~~ ~~[53.501]~~. LEGISLATIVE SERVICE. (a) A member may establish credit for current service in the retirement system for service performed as a member of the legislature, if the member deposits with the system a contribution in an amount computed for each month of service claimed at the contribution rate currently required of an employee of the subdivision that employs the member, multiplied by \$400. On the member's making a deposit, the employing subdivision shall deposit with the retirement system a contribution in an amount equal to the amount deposited by the member.

(b) A member claiming credit for previous legislative service shall file a detailed statement of the service with the treasurer or other disbursing officer of the subdivision by which the member is currently employed. As soon as practicable after the filing of a statement, the employing subdivision shall verify the service claimed and certify to the board of trustees the amount of service approved.

[Sections ~~843.502-843.600~~ ~~[53.502-53.600]~~ reserved for expansion]

#### SUBCHAPTER G. OPTIONAL CURRENT SERVICE

Sec. ~~843.601~~ ~~[53.601]~~. CURRENT SERVICE FOR MILITARY DUTY. (a) The governing body of a participating subdivision may, on the terms provided by Section ~~844.201~~ ~~[54.201 of this subtitle]~~, authorize the establishment of credit for current service in the retirement system for military service creditable as provided by this section.

(b) Military service creditable in the retirement system under this section is service as a member of the armed forces of the United States during a time, or before the first anniversary of the last day of a time, that the United States is or was engaged in:

(1) organized conflict with foreign forces, whether a state of war or a police action;  
or

(2) a crisis in this country.

(c) The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as times of organized conflict or crisis.

(d) A member eligible to establish credit under this section is one who:

(1) does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active federal military duty or its equivalent;

(2) has been released from military duty under conditions not dishonorable;

(3) became a member of the retirement system after release from military duty; and

(4) has performed as an employee at least 10 years of service that is credited in the retirement system.

(e) An eligible member may establish credit under this section by filing with the retirement system an application for the credit. An application must be accompanied by a contribution in an amount computed as the number of months of service claimed under this section, times the lesser of:

- (1) the member's average monthly contribution for the first 12 months as an employee after becoming a member of the retirement system; or
- (2) \$15.

(f) If a member makes a deposit under Subsection (e) [~~of this section~~], the subdivision shall deposit with the retirement system a contribution in an amount equal to the amount deposited under Subsection (e).

(g) The maximum amount of current credited service that may be established under this section is:

- (1) 3 years, if the member has performed as an employee at least 10 but less than 15 years of service that is credited in the retirement system; or
- (2) 5 years, if the member has performed as an employee at least 15 years of service that is credited in the system.

(h) Credit may not be established under this section for service that is simultaneously credited by another retirement system or program established or governed by state law.

[Sections 843.602–843.700 [~~53.603–53.700~~] reserved for expansion]

#### SUBCHAPTER H. OPTIONAL INCREASES IN SERVICE CREDITS

Sec. 843.701 [~~53.701~~]. INCREASE IN PRIOR SERVICE CREDITS. The governing body of a participating subdivision may, on the terms provided by Section 844.201 [~~54.201 of this subtitle~~], increase the percentage of maximum prior service credits used in determining the allocated prior service credits previously granted and in effect concerning prior service with the subdivision.

Sec. 843.702 [~~53.702~~]. RECOMPUTATION OF SERVICE CREDITS. (a) The governing body of a participating subdivision having active members and annuitants whose current or maximum prior service credits have been computed on a basis other than total compensation may by order elect to have the credits recomputed as the sum of:

- (1) an amount determined as provided by Section 843.105(b) [~~53.105(b) of this subtitle~~], using average compensation as determined under Section 843.104 [~~53.104 of this subtitle~~], except that compensation exceeding the limits provided by Section 843.104(c) [~~53.104(c)~~] may not be excluded in the computation; plus either

- (2) an amount determined as two times the excess of (i) over (ii), discounted at interest from the date one year prior to the date of election to the subdivision's participation date, where (i) is the amount of accumulated contributions the member would have had one year prior to the date of election if in each calendar year since membership began the member had contributed on the basis of the contribution rate applicable at that time and the member's total compensation at that time, and (ii) is the member's actual accumulated contributions one year prior to the date of election; or

- (3) an amount determined as two times the excess of (i) over (ii), discounted at interest from the date of retirement to the subdivision's participation date, where (i) is the amount of accumulated contributions the annuitant would have had on the date of retirement if in each calendar year of membership the annuitant had contributed on the basis of the contribution rate applicable at that time and the annuitant's total compensation at that time, and (ii) is the annuitant's actual accumulated contributions on the date of retirement.

(b) The subdivision governing body shall determine the effective date of an election under this section, which may be the first day of any calendar year.

(c) An election must require member contributions to be based, beginning on the effective date of the election, on the basis of total compensation as prescribed by this section. An election must apply to all members and annuitants.

(d) A subdivision governing body may not make an election under this section unless the actuary first determines that the recomputation would not impair the ability of the subdivision to pay all obligations charged against its account in the subdivision accumulation fund, before the 30th anniversary of the December 31 valuation date determined under Section ~~844.201~~ ~~[54.201 of this subtitle]~~.

Sec. ~~843.703~~ ~~[53.703]~~. INCREASE IN MULTIPLE MATCHING CREDITS. (a) The governing body of a participating subdivision may, on the terms provided by Section ~~844.201~~ ~~[54.201 of this subtitle]~~, increase the percentage used in determining multiple matching credits under Section ~~843.403(c)~~ ~~[53.403(c) of this subtitle]~~.

(b) A percentage increase in multiple matching credits must be in a multiple of 10 percent of the amount of member contributions and must be applied to all members and annuitants who have performed or subsequently perform current service that is credited with the subdivision in the retirement system.

## CHAPTER 844 [54]. BENEFITS

## SUBCHAPTER A. GENERAL PROVISIONS

## Sec. 844.001 [54.001]. TYPES OF BENEFITS

## Sec. 844.002 [54.002]. COMPOSITION OF RETIREMENT ANNUITY

## Sec. 844.003 [54.003]. EFFECTIVE DATE OF RETIREMENT

## Sec. 844.004 [54.004]. REPEALED

## Sec. 844.005 [54.005]. WHEN ANNUITY IS PAYABLE

[Sections 844.006–844.100 [54.006–54.100] reserved for expansion]

## SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

## Sec. 844.101 [54.101]. APPLICATION FOR SERVICE RETIREMENT ANNUITY

## Sec. 844.102 [54.102]. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY

## Sec. 844.103 [54.103]. STANDARD SERVICE RETIREMENT ANNUITY

## Sec. 844.104 [54.104]. OPTIONAL SERVICE RETIREMENT ANNUITY

Sec. 844.105 [54.105]. SELECTION OF OPTIONAL SERVICE  
RETIREMENT ANNUITYSec. 844.106 [54.106]. SELECTION OF OPTIONAL SERVICE RETIREMENT  
ANNUITY BY CERTAIN MEMBERSSec. 844.107 [54.107]. ADDITIONAL DEFERRED RETIREMENT  
BENEFIT SELECTION

[Sections 844.108–844.200 [54.108–54.200] reserved for expansion]

## SUBCHAPTER C. OPTIONAL RETIREMENT BENEFITS

## Sec. 844.201 [54.201]. CONDITIONS FOR OPTIONAL BENEFITS

## Sec. 844.202 [54.202]. OPTIONAL SERVICE RETIREMENT ELIGIBILITY

Sec. 844.203 [54.203]. OPTIONAL SELECTION OF OPTIONAL ANNUITY  
BY CERTAIN MEMBERSSec. 844.204 [54.204]. OPTIONAL SELECTION OF OPTIONAL ANNUITY BY  
CERTAIN OTHER MEMBERSSec. 844.205 [54.205]. OPTIONAL INCREASE IN ANNUITIES  
FOR CURRENT SERVICESec. 844.206 [54.206]. OPTIONAL INCREASE IN ANNUITIES  
FOR PRIOR SERVICE

## Sec. 844.207 [54.207]. OPTIONAL BENEFIT ELIGIBILITY PLAN

[Sections 844.208–844.300 [54.208–54.300] reserved for expansion]

## SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS

## Sec. 844.301 [54.301]. APPLICATION FOR DISABILITY RETIREMENT ANNUITY

## Sec. 844.302 [54.302]. ELIGIBILITY FOR DISABILITY RETIREMENT ANNUITY

## Sec. 844.303 [54.303]. CERTIFICATION OF DISABILITY

## Sec. 844.304 [54.304]. STANDARD DISABILITY RETIREMENT ANNUITY

## Sec. 844.305 [54.3041]. OPTIONAL DISABILITY RETIREMENT ANNUITY

## Sec. 844.306 [54.305]. MEDICAL EXAMINATION OF DISABILITY RETIREE

## Sec. 844.307 [54.306]. CERTIFICATION OF END OF DISABILITY

## Sec. 844.308 [54.307]. RETURN OF DISABILITY RETIREE TO ACTIVE SERVICE

## Sec. 844.309 [54.308]. REFUND AT ANNUITY DISCONTINUANCE

[Sections 844.310–844.400 [54.309–54.400] reserved for expansion]

SUBCHAPTER E. DEATH BENEFITS

Sec. 844.401 [54.401]. RETURN OF CONTRIBUTIONS

Sec. 844.402 [54.402]. EXCESS CONTRIBUTIONS OF SERVICE RETIREE

Sec. 844.403 [54.403]. EXCESS CONTRIBUTIONS OF DISABILITY RETIREE

[Sections 844.404–844.500 [54.404–54.500] reserved for expansion]

SUBCHAPTER F. OPTIONAL DEATH BENEFITS

Sec. 844.501 [54.501]. COVERAGE IN SUPPLEMENTAL  
DEATH BENEFIT PROGRAM

Sec. 844.502 [54.502]. EXTENDED SUPPLEMENTAL DEATH BENEFIT COVERAGE

Sec. 844.503 [54.503]. MEMBER SUPPLEMENTAL DEATH BENEFIT

Sec. 844.504 [54.504]. RETIREE SUPPLEMENTAL DEATH BENEFIT

Sec. 844.505 [54.505]. BENEFICIARY OF SUPPLEMENTAL DEATH BENEFIT

[Sections 844.506–844.600 [54.506–54.600] reserved for expansion]

SUBCHAPTER G. OPTIONAL ADDITIONAL SUBDIVISION CONTRIBUTIONS  
OR DECREASE IN CREDITS

Sec. 844.601 [54.601]. CONDITIONS PERMITTING ADDITIONAL  
SUBDIVISION CONTRIBUTIONS OR DECREASE IN CREDITS

Sec. 844.602 [54.602]. OPTIONAL ADDITIONAL SUBDIVISION CONTRIBUTIONS

Sec. 844.603 [54.603]. OPTIONAL DECREASE IN CREDITS

Sec. 844.604 [54.604]. ADDITIONAL CONTRIBUTIONS AND DECREASE IN  
MULTIPLE MATCHING CREDITS MAY BE COMBINED

Sec. 844.605 [54.605]. SUPPLEMENTAL CONTRIBUTION RATE FOR  
CERTAIN SUBDIVISIONS

Sec. 844.606 [54.606]. ADDITIONAL OPTIONAL DECREASE IN CREDITS

CHAPTER 844 [54]. BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 844.001 [54.001]. TYPES OF BENEFITS. The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) disability retirement benefits; and
- (3) death benefits.

Sec. 844.002 [54.002]. COMPOSITION OF RETIREMENT ANNUITY. (a) Each retirement annuity payable under this subtitle consists of a basic annuity and a supplemental annuity.

(b) A basic annuity is an amount payable from the current service annuity reserve fund and is actuarially determined from the sum of a member's:

- (1) accumulated contributions; and
- (2) current service credit, accumulated at interest as provided by Section 843.403(d) [53.403(d) of this subtitle].

(c) A supplemental annuity is an amount payable from the subdivision accumulation fund, subject to reduction under Section ~~842.004(c) or 845.307(c) [52.004(c) or Section 55.307(c) of this subtitle]~~, and is actuarially determined from the sum of:

(1) a member's allocated prior service credit, accumulated at interest as provided by Section ~~843.105(d) [53.105(d) of this subtitle]~~; and

(2) a member's multiple matching credit, accumulated at interest as provided by Section ~~843.403(d) [53.403(d) of this subtitle]~~.

(d) Any increase in the annuity granted by a participating subdivision after December 31, 1978, is payable from the subdivision accumulation fund as part of the supplemental annuity.

Sec. ~~844.003 [54.003]~~. EFFECTIVE DATE OF RETIREMENT. (a) Except as provided by ~~[Section 54.004 of this subtitle and]~~ Subsection (b) ~~[of this section]~~, the effective date of a member's service retirement is the date the member designates at the time the member applies for retirement under Section ~~844.101 [54.101 of this subtitle]~~, but the date must be the last day of a calendar month and may not precede the date the member terminates employment with all participating subdivisions.

(b) If a member who is eligible under Section ~~844.105, 844.106, 844.203, 844.204, or 844.207(e) [54.105, 54.106, 54.203, 54.204, or 54.207(e) of this subtitle]~~ to select an optional retirement annuity dies before retirement, the member is considered to have retired on the last day of the month before the month in which death occurred or on the day before the first anniversary of the effective date of the person's membership, whichever is later.

(c) Except as provided by Subsection (b) ~~[of this section]~~, the effective date of a member's disability retirement is the date designated on the application for retirement filed by or for the member as provided by Section ~~844.301 [54.301 of this subtitle]~~, but the date may not precede the date the member terminates employment with all participating subdivisions.

Sec. ~~844.004 [54.004]~~. REPEALED.

Sec. ~~844.005 [54.005]~~. WHEN ANNUITY IS PAYABLE. An annuity under this subtitle is payable for a period beginning on the last day of the first month following the month in which retirement occurs and ending, except as otherwise provided by this subtitle, on the last day of the month immediately preceding the month in which death occurs.

[Sections ~~844.006-844.100 [54.006-54.100]~~ reserved for expansion]

#### SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

Sec. ~~844.101 [54.101]~~. APPLICATION FOR SERVICE RETIREMENT ANNUITY. A member may apply for a service retirement annuity by filing an application for retirement with the board of trustees not less than 30 nor more than 90 days before the date the member wishes to retire.

Sec. ~~844.102 [54.102]~~. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY. (a) A member is eligible, beginning on the first anniversary of the effective date of the person's membership, to retire and receive a service retirement annuity, if the member:

(1) is at least 60 years old and has at least 12 years of credited service in the retirement system; or

(2) has at least 30 years of credited service in the retirement system.

(b) A member may terminate employment with all participating subdivisions and, beginning on the first anniversary of the effective date of the person's membership, remain eligible to retire and receive a service retirement annuity at any time after the member attains the age of 60, if the member has at least 20 years of credited service in the retirement system.

(c) A member whose most recent service was performed for a subdivision having an effective date of participation in the retirement system after August 31, 1979, may terminate employment with all participating subdivisions and remain eligible to retire and

receive a service retirement annuity at any time after the member attains the age of 60, if the member has at least 12 years of credited service performed for one or more subdivisions that are either subject to this subsection or have adopted a like provision under Section ~~844.202~~ ~~[54.202 of this subtitle]~~.

Sec. ~~844.103~~ ~~[54.103]~~. STANDARD SERVICE RETIREMENT ANNUITY. (a) The standard service retirement annuity payable under this subtitle is discounted for the possibility of payment of a benefit under Section ~~844.402~~ ~~[54.402 of this subtitle]~~ and is the actuarial equivalent of the sum of a member's:

- (1) accumulated contributions;
- (2) current service credit, accumulated at interest as provided by Section ~~843.403(d)~~ ~~[53.403(d) of this subtitle]~~;
- (3) allocated prior service credit, accumulated at interest as provided by Section ~~843.105(d)~~ ~~[53.105(d) of this subtitle]~~; and
- (4) multiple matching credit, accumulated at interest as provided by Section ~~843.403(d)~~ ~~[53.403(d) of this subtitle]~~.

(b) A standard service retirement annuity is payable throughout the life of a retiree.

Sec. ~~844.104~~ ~~[54.104]~~. OPTIONAL SERVICE RETIREMENT ANNUITY. (a) Instead of the standard service retirement annuity payable under Section ~~844.103~~ ~~[54.103 of this subtitle]~~, a retiring member may elect to receive an optional service retirement annuity under this section.

(b) An optional service retirement annuity is payable throughout the life of the retiree and is actuarially reduced from the standard service retirement annuity to its actuarial equivalent under the option selected under Subsection (c) ~~[of this section]~~.

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

- (1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;
- (2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;
- (3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or
- (4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(d) To select an optional service retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(e) A retiree who dies before the 31st day after the effective date of service retirement and who did not select an optional service retirement annuity before death is considered to have selected an optional annuity under Subsection (c)(4) ~~[of this section]~~. Alternatively, the decedent's beneficiary may elect to receive a refund of the decedent's accumulated contributions under Section ~~844.401~~ ~~[54.401 of this subtitle]~~, in which case the decedent will be considered to have been a contributing member at the time of death.

Sec. ~~844.105~~ ~~[54.105]~~. SELECTION OF OPTIONAL SERVICE RETIREMENT ANNUITY. (a) A member who has at least 30 years of credited service in the retirement system may, before the effective date of the member's retirement, file with the board of trustees, on a form prescribed by the board, a selection of an optional service retirement annuity available under Section ~~844.104~~ ~~[54.104 of this subtitle]~~ and a designation of beneficiary.



(b) A member may change a selection of an optional annuity or a designation of beneficiary at any time before the member's retirement or death in the same manner that the original selection and designation were made.

(c) If a member eligible under this section to select an optional service retirement annuity dies before retirement without having made a selection, the member's surviving spouse may select an optional annuity in the same manner as if the member had made the selection. If there is no surviving spouse, the executor or administrator of the member's estate may elect:

(1) for an estate beneficiary to receive the optional annuity under Section ~~844.104(c)(4)~~ [54.104(c)(4) of this subtitle], in which case the member will be considered to have retired on the last day of the month before the month in which death occurred; or

(2) for the estate to receive a refund of the member's accumulated contributions under Section ~~844.401~~ [54.401 of this subtitle], in which case the member will be considered to have been a contributing member at the time of death.

Sec. ~~844.106~~ [54.106]. SELECTION OF OPTIONAL SERVICE RETIREMENT ANNUITY BY CERTAIN MEMBERS. (a) An eligible member who is an employee of a subdivision having an effective date of participation in the retirement system after August 31, 1979, may select an optional service retirement annuity in the manner and under the conditions provided by Section ~~844.105~~ [54.105 of this subtitle].

(b) A member eligible under this section to select an optional service retirement annuity is one who:

(1) is at least 60 years old and has at least 12 years of credited service in the retirement system performed for one or more subdivisions whose employees may select an optional annuity after meeting the same age and service requirements provided in this subdivision; or

(2) has at least 20 years of credited service in the retirement system performed for one or more subdivisions whose employees may select an optional annuity after meeting the same service requirement provided in this subdivision.

(c) If a member eligible under this section dies before retirement without having made a selection, the member's surviving spouse or the executor or administrator of the member's estate may make the selection provided by Section ~~844.105(c)~~ [54.105(e) of this subtitle] under the terms of that subsection.

Sec. ~~844.107~~ [54.107]. ADDITIONAL DEFERRED RETIREMENT BENEFIT SELECTION. (a) A member who is entitled under Section ~~844.105, 844.106, 844.203, 844.204, or 844.207(e)~~ [54.105, Section 54.106, Section 54.203, Section 54.204, or Section 54.207(e) of this subtitle] to select one of the optional service retirement annuities authorized by Section ~~844.104~~ [54.104 of this subtitle] may elect instead to name a beneficiary who, in event of the death of the member before retirement, *will* [shall] be allowed to choose any benefit that the member could have chosen to be paid to *the* [such] beneficiary, with like effect as if the selection had been made by the member.

(b) Except as provided in Section ~~844.105(c)(2)~~ [54.105(e)(2) of this subtitle], any annuity payable under the provisions of Section ~~844.105, 844.106, 844.203, 844.204, or 844.207(e)~~ [54.105, 54.106, 54.203, 54.204, or 54.207(e) of this subtitle] shall be calculated on the assumption that the member had actually retired under the annuity selected and with the same beneficiary, effective on the last day of the calendar month before the month in which death of the member occurred.

[Sections ~~844.108–844.200~~ [54.108–54.200] reserved for expansion]

#### SUBCHAPTER C. OPTIONAL RETIREMENT BENEFITS

Sec. ~~844.201~~ [54.201]. CONDITIONS FOR OPTIONAL BENEFITS. (a) The governing body of a participating subdivision by order or resolution may, on the terms provided by this section:

(1) authorize the establishment of credited service under Section ~~843.202~~ [53.202] or ~~843.601~~ [53.601 of this subtitle];

- (2) recompute service credits under Section ~~843.701~~ [53.701] or ~~843.703~~ [53.703 of this subtitle];
  - (3) extend participation in benefits under Section ~~844.202~~, ~~844.203~~, or ~~844.204~~ [54.202, 54.203, or 54.204 of this subtitle];
  - (4) recompute annuities under Section ~~844.205~~ [54.205] or ~~844.206~~ [54.206 of this subtitle]; or
  - (5) adopt the optional benefit-eligibility plan under Section ~~844.207~~ [54.207 of this subtitle].
- (b) A governing body may not adopt an order or resolution as provided by Subsection (a) [of this section] before an actuarial valuation under Section ~~845.206~~ [55.206 of this subtitle] is made that has a December 31 valuation date that coincides with, or is after, the completion of three years after the later of the following dates:
- (1) the effective date of subdivision participation in the retirement system; or
  - (2) the effective date of the most recent order or resolution adopted under this section.
- (c) An increase in annuity payments payable from the current service annuity reserve fund or the subdivision accumulation fund, or attributable to recomputation of allocated prior service credits, current service credits, or multiple matching credits that were originally determined previously may not provide greater benefits for completed service than would be provided through current service credits and multiple matching credits for service that is performed in the future.
- (d) An order or resolution may not be adopted as provided by Subsection (a) [of this section] unless the actuary determines and certifies that:
- (1) implementation of the order or resolution would not impair the ability of the subdivision to fund, before the 30th anniversary of the valuation date described in Subsection (b) [of this section], all obligations charged against the subdivision's account in the subdivision accumulation fund; and
  - (2) all retirement obligations of the subdivision existing before the proposed effective date of an order or resolution under this section would be amortized on or before the 20th anniversary of the valuation date described in Subsection (b) [of this section].
- (e) An order or resolution under this section may not take effect until the order or resolution is approved by the board of trustees as meeting the requirements of this section. After approval by the board, an order or resolution may take effect only:
- (1) after the first anniversary of the valuation date described in Subsection (b) [of this section]; and
  - (2) on January 1 of a year.

Sec. ~~844.202~~ [54.202]. **OPTIONAL SERVICE RETIREMENT ELIGIBILITY.** (a) The governing body of a participating subdivision may authorize an employee of the subdivision who is a member of the retirement system to terminate employment with the subdivision and remain eligible to retire and receive a service retirement annuity at any time after the member attains the age of 60, if the member has at least 12 years of credited service performed for one or more subdivisions that either have authorized the eligibility under this section or are subject to Section ~~844.102(c)~~ [54.102(c) of this subtitle].

(b) The governing body of a subdivision may not authorize eligibility for service retirement under this section except on the terms provided by Section ~~844.201~~ [54.201 of this subtitle].

Sec. ~~844.203~~ [54.203]. **OPTIONAL SELECTION OF OPTIONAL ANNUITY BY CERTAIN MEMBERS.** (a) The governing body of a participating subdivision may authorize an employee of the subdivision who is a member of the retirement system to select an optional service retirement annuity in the manner and under the conditions provided by Section ~~844.105~~ [54.105 of this subtitle], if the member has at least 20 years of credited service in the system performed for one or more subdivisions whose employees may select an optional annuity after meeting the same service requirement provided in this subsection.

(b) If a member authorized under this section to select an optional service retirement annuity dies before retirement without having made a selection, the member's surviving spouse or the executor or administrator of the member's estate may make the selection provided by Section ~~844.105(c) [54.105(e) of this subtitle]~~ under the terms of that subsection.

(c) The governing body of a subdivision may not authorize selection of an optional annuity under this section except on the terms provided by Section ~~844.201 [54.201 of this subtitle]~~.

**Sec. 844.204 [54.204]. OPTIONAL SELECTION OF OPTIONAL ANNUITY BY CERTAIN OTHER MEMBERS.** (a) The governing body of a participating subdivision may authorize an employee of the subdivision who is a member of the retirement system to select an optional service retirement annuity in the manner and under the conditions provided by Section ~~844.105 [54.105]~~, if the member is at least 60 years old and has at least 12 years of credited service in the system performed for one or more subdivisions whose employees may select an optional annuity after meeting the same age and service requirements provided in this subsection.

(b) If a member authorized under this section to select an optional service retirement annuity dies before retirement without having made a selection, the member's surviving spouse or the executor or administrator of the member's estate may make the selection provided by Section ~~844.105(c) [54.105(e) of this subtitle]~~ under the terms of that subsection.

(c) The governing body of a subdivision may not authorize selection of an optional annuity under this section except on the terms provided by Section ~~844.201 [54.201 of this subtitle]~~.

**Sec. 844.205 [54.205]. OPTIONAL INCREASE IN ANNUITIES FOR CURRENT SERVICE.** (a) The governing body of a participating subdivision may increase that part of each annuity payment that is attributable to credit granted by the subdivision for current service, which includes current service credit and multiple matching credit.

(b) The governing body of a subdivision may not increase annuity payments under this section except on the terms provided by Section ~~844.201 [54.201 of this subtitle]~~.

**Sec. 844.206 [54.206]. OPTIONAL INCREASE IN ANNUITIES FOR PRIOR SERVICE.** (a) The governing body of a participating subdivision may increase that part of each annuity payment that is attributable to credit granted by the subdivision for prior service, which is allocated prior service credit.

(b) The governing body of a subdivision may not increase annuity payments under this section except on the terms provided by Section ~~844.201 [54.201 of this subtitle]~~.

**Sec. 844.207 [54.207]. OPTIONAL BENEFIT ELIGIBILITY PLAN.** (a) The provisions of this section shall apply to all subdivisions which elect after September 1, 1985, to begin participation in the retirement system. Subject to the conditions below, the governing body of any subdivision participating as of September 1, 1985, may adopt the plan provisions of this section.

(b) The term "Section ~~844.207 [54.207]~~ credited service" as used in this section means credited service performed for one or more participating subdivisions that have adopted the plan provisions of this section.

(c) A member shall be eligible, beginning on the first anniversary date of *the person's* [his] membership, to retire and receive a service retirement annuity, if the member:

(1) is at least 60 years old and has at least 10 years of Section ~~844.207 [54.207]~~ credited service in the retirement system; or

(2) has sufficient years of Section ~~844.207 [54.207]~~ credited service in the retirement system that, when such number is added to the years of attained age of the member, produces a sum equal to or in excess of the number 80; or

(3) if the member is eligible for service retirement under any other provision of this subtitle.

(d) If a member has 10 years or more of Section ~~844.207~~ [54.207] credited service in the retirement system, subsequent absence from service shall not terminate membership, and unless membership is otherwise terminated, the member shall be eligible to retire and receive a service retirement annuity at any time after the member attains the age of 60 years.

(e) An employee of a participating subdivision which has adopted the plan provisions of this section may select an optional service retirement annuity in the manner and under the conditions provided in Section ~~844.105~~ [54.105], if the member:

(1) has 10 or more years of Section ~~844.207~~ [54.207] credited service in the retirement system and has attained the age of 60 years; or

(2) has at least 20 years of Section ~~844.207~~ [54.207] credited service or is otherwise eligible to make such selection of an optional service retirement annuity under the provisions of Section ~~844.105, 844.106, 844.203, or 844.204~~ [54.105, 54.106, 54.203, or 54.204 of this subtitle]. If a member who is authorized under this subsection to select an optional service retirement annuity dies before retirement without having made a selection, the member's surviving spouse or the executor or administrator of the member's estate may make the selection provided by Section ~~844.105~~ [54.105 of this subtitle] under the terms of that subsection.

(f) A member who has 10 years or more of Section ~~844.207~~ [54.207] credited service in the retirement system, but is not eligible for service retirement, is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided in Section ~~844.303(b)(2)~~ [54.303(b)(2) of this subtitle]; but a member is not entitled to retire for disability before the first anniversary of the effective date of the person's membership.

(g) The governing body of a subdivision may not adopt the plan provisions of this section except on the terms provided by Section ~~844.201~~ [54.201 of this subtitle], except that the actuarial valuation required may be made on a valuation date of December 31, 1984, or any subsequent year, and notwithstanding the provisions of Section ~~844.201(d)(2)~~ [54.201(d)(2) of this subtitle].

[Sections ~~844.208-844.300~~ [54.208-54.300] reserved for expansion]

#### SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS

##### Sec. ~~844.301~~ [54.301]. APPLICATION FOR DISABILITY RETIREMENT ANNUITY.

(a) A member may apply for a disability retirement annuity by:

(1) filing an application for retirement with the board of trustees; or

(2) having an application filed with the board by the member's employer or legal representative.

(b) An application for a disability retirement annuity may not be made less than 30 nor more than 90 days before the date the member wishes to retire.

(c) An applicant must submit to medical examination as required by the medical board.

##### Sec. ~~844.302~~ [54.302]. ELIGIBILITY FOR DISABILITY RETIREMENT ANNUITY.

(a) Except as provided by Subsection (c) [of this section], a member who has less than 12 years of credited service in the retirement system is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section ~~844.303(b)(1)~~ [54.303(b)(1) of this subtitle].

(b) Except as provided by Subsection (c) [of this section], a member who has at least 12 years of credited service in the retirement system but is not eligible for a service retirement annuity is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section ~~844.303(b)(2)~~ [54.303(b)(2) of this subtitle].

(c) A member is not eligible to retire for disability before the first anniversary of the effective date of the person's membership.

Sec. 844.303 [54.303]. CERTIFICATION OF DISABILITY. (a) As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information concerning the member's application.

(b) The medical board shall issue a certification of disability and submit it to the board of trustees, if the medical board finds:

(1) in the case of a member who has less than 12 years of credited service in the retirement system, that:

(A) the member is mentally or physically incapacitated for any gainful occupation;

(B) the incapacity is the direct result of injuries sustained during membership by external and violent means as a direct and proximate result of the performance of duty;

(C) the incapacity is likely to be permanent; and

(D) the member should be retired; or

(2) in the case of a member who has at least 12 years of credited service in the retirement system but is not eligible for a service retirement annuity, that:

(A) the member is mentally or physically incapacitated for any gainful occupation;

(B) the incapacity is likely to be permanent; and

(C) the member should be retired.

Sec. 844.304 [54.304]. STANDARD DISABILITY RETIREMENT ANNUITY. (a) The standard disability retirement annuity is discounted for the possibility of payment of a benefit under Section 844.403 [54.403 of this subtitle] and is the actuarial equivalent of the sum of a member's:

(1) accumulated contributions;

(2) current service credit, accumulated at interest as provided by Section 843.403(d) [53.403(d) of this subtitle];

(3) allocated prior service credit, accumulated at interest as provided by Section 843.105(d) [53.105(d) of this subtitle]; and

(4) multiple matching credit, accumulated at interest as provided by Section 843.403(d) [53.403(d) of this subtitle].

(b) A standard disability retirement annuity is payable throughout the life of a retiree.

Sec. 844.305 [54.304]. OPTIONAL DISABILITY RETIREMENT ANNUITY. (a) Instead of the standard disability retirement annuity payable under Section 844.304 [54.304 of this subtitle], a retiring member may elect to receive an optional disability retirement annuity under this section.

(b) An optional disability retirement annuity is payable throughout the life of the retiree and is actuarially reduced from the standard disability retirement annuity to its actuarial equivalent under the option selected under Subsection (c) [of this section].

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

(4) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(d) To select an optional disability retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(e) A retiree who dies before the 31st day after the effective date of disability retirement and who did not select an optional disability retirement annuity before death is considered to have selected an optional annuity under Subsection (c)(4) ~~[of this section]~~. Alternatively, the decedent's beneficiary may elect to receive a refund of the decedent's accumulated contributions under Section ~~844.401~~ ~~[54.401 of this subtitle]~~, in which case the decedent will be considered to have been a contributing member at the time of death.

(f) If a person's disability retirement annuity is discontinued under Section ~~844.307~~ ~~[54.306]~~ or ~~844.308~~ ~~[54.307 of this subtitle]~~, the person's selection of any optional annuity under this section becomes void.

Sec. ~~844.306~~ ~~[54.305]~~. MEDICAL EXAMINATION OF DISABILITY RETIREE. (a) Once each year during the first five years after a person retires for disability, and once in each three-year period after that, the board of trustees may require a disability retiree who is less than 60 years old to undergo a medical examination.

(b) An examination under this section may be held at the retiree's residence or at any place mutually agreed to by the board and the retiree. The board shall designate a physician to perform the examination.

(c) If a disability retiree refuses to submit to a medical examination as provided by this section, the board of trustees shall suspend the retiree's annuity payments until the retiree submits to an examination. If a retiree has not submitted to an examination as provided by this section before the first anniversary of the date of first refusal, the board shall revoke all rights of the retiree to an annuity.

Sec. ~~844.307~~ ~~[54.306]~~. CERTIFICATION OF END OF DISABILITY. (a) If the medical board finds that a disability retiree is no longer mentally or physically incapacitated for the performance of duty or is engaged in or able to engage in gainful occupation, it shall certify its findings and submit them to the board of trustees.

(b) If the board of trustees concurs in a certification under this section, it shall discontinue annuity payments to the retiree.

Sec. ~~844.308~~ ~~[54.307]~~. RETURN OF DISABILITY RETIREE TO ACTIVE SERVICE. (a) If a retiree who is less than 60 years old and who is receiving a disability retirement annuity resumes employment with a participating subdivision, the person automatically resumes membership in the retirement system, and the board of trustees shall terminate the person's annuity payments.

(b) If a person resumes membership under this section, the retirement system shall restore to effect any prior service certificate used in determining the amount of the person's annuity at the time of disability retirement. If the person subsequently retires, the retirement system shall allow the person credit for all current service for which required contributions have been made.

Sec. ~~844.309~~ ~~[54.308]~~. REFUND AT ANNUITY DISCONTINUANCE. (a) Except as provided by Subsection (b) ~~[of this section]~~, if a disability retirement annuity is discontinued under Section ~~844.307~~ ~~[54.306 of this subtitle]~~ or the right to an annuity revoked under Section ~~844.306(c)~~ ~~[54.305(c) of this subtitle]~~, the retiree is entitled to a lump-sum payment in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of basic and supplemental annuity payments made before the date the annuity was discontinued or the right to an annuity revoked.

(b) The benefit provided by this section is not payable to a retiree who resumes employment with a participating subdivision.

(c) The benefit provided by this section is payable from the current service annuity reserve fund and the subdivision accumulation fund in the ratio that the parts of the disability retirement annuity that were payable from the funds bear to the entire benefit as determined on the effective date of retirement.

[Sections 844.310–844.400 [54.309–54.400] reserved for expansion]

#### SUBCHAPTER E. DEATH BENEFITS

Sec. 844.401 [54.401]. RETURN OF CONTRIBUTIONS. (a) Except as provided by Subsection (c) [~~of this section~~], if a member dies before retirement, a lump-sum death benefit is payable from the employees saving fund in the amount of:

(1) the accumulated contributions in the member's individual account in the fund; plus

(2) interest computed from the beginning of the year in which death occurs through the end of the month before the month in which death occurs at the rate allowed on member contributions during the preceding year.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) A benefit is not payable under this section if an annuity based on the decedent's service is payable under this subtitle.

Sec. 844.402 [54.402]. EXCESS CONTRIBUTIONS OF SERVICE RETIREE. (a) If a person who receives a standard service retirement annuity dies, a lump-sum death benefit is payable in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of service retirement exceeds the amount of annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) The benefit provided by this section is payable from the current service annuity reserve fund and the subdivision accumulation fund in the ratio that the parts of the service retirement annuity that were payable from the funds bear to the entire benefit as determined on the effective date of retirement.

Sec. 844.403 [54.403]. EXCESS CONTRIBUTIONS OF DISABILITY RETIREE. (a) If a person who receives a standard disability retirement annuity dies, a lump-sum death benefit is payable in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the sum of annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) The benefit provided by this section is payable from the current service annuity reserve fund and the subdivision accumulation fund in the ratio that the parts of the disability retirement annuity that were payable from the funds bear to the entire benefit as determined on the effective date of retirement.

[Sections 844.404–844.500 [54.404–54.500] reserved for expansion]

#### SUBCHAPTER F. OPTIONAL DEATH BENEFITS

Sec. 844.501 [54.501]. COVERAGE IN SUPPLEMENTAL DEATH BENEFIT PROGRAM. (a) An employee of a participating subdivision is included within the coverage of the supplemental death benefit program on that day in the first month in which:

(1) the employing subdivision is participating in the supplemental death benefits fund for coverage of all members it employs;

(2) the employee is a member of the retirement system; and

(3) the employee is required to make a contribution to the retirement system.

(b) Once established, coverage of a person in the supplemental death benefit program continues until the last day of a month in which a requirement of Subsection (a) [~~of this section~~] is not met.

Sec. 844.502 [54.502]. EXTENDED SUPPLEMENTAL DEATH BENEFIT COVERAGE. (a) A member included in the coverage of the supplemental death benefit program who fails to earn compensation in a month for service to a subdivision participating in the supplemental death benefits fund is eligible to receive extended coverage in the program on complying with the terms of this section.

(b) A member may apply to the retirement system for extended program coverage and submit evidence of eligibility for extended coverage.

(c) The board of trustees shall grant extended coverage in the supplemental death benefit program to an applicant, if the board finds:

(1) that as a result of illness or injury, the member is unable to engage in gainful occupation; and

(2) that the member made a required contribution to the retirement system as an employee of a subdivision participating in the supplemental death benefits fund for the month immediately preceding the first full month in which the member was unable to engage in gainful occupation.

(d) Once established, extended coverage of a person in the supplemental death benefit program continues until the last day of the month in which:

(1) the member returns to work as an employee of a participating subdivision;

(2) the board of trustees finds that the member is able to engage in gainful occupation;

(3) the person's membership in the retirement system is terminated; or

(4) the member retires under this subtitle.

(e) The board of trustees by rule may require a member to submit to it annual proof of continued inability to engage in gainful occupation. The board may require a member to undergo a medical examination by a physician designated by the board. Failure of a member to undergo a medical examination as required by this subsection is a ground for the board's finding that the member has become able to engage in gainful occupation.

(f) If a member included in the coverage of the supplemental death benefit program becomes eligible to apply for extended coverage but fails to comply with Subsections (b) and (c) ~~[of this section]~~ before the member's ~~[his]~~ death, the member will be considered to have had the extended coverage if proof is furnished that the member could have qualified for extended coverage if application had been made according to Subsections (b) and (c) ~~[of this section]~~ and that the ~~[his]~~ death occurred within six months after the date the coverage of the supplemental death benefit program was discontinued according to Section 844.501 [54.501].

Sec. 844.503 [54.503]. MEMBER SUPPLEMENTAL DEATH BENEFIT. (a) If a person included in the coverage or extended coverage of the supplemental death benefit program dies, a lump-sum supplemental death benefit is payable from the supplemental death benefits fund in an amount equal to the current annual salary of the member at the time of death.

(b) Except as provided by Subsection (c) ~~[of this section]~~, the current annual salary of a member is computed as the amount paid to the member for service on which contributions were made to the retirement system during the 12 months immediately preceding the month of death. If a member did not receive compensation for service in each of the 12 months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the amount paid to the member on which contributions were made to the system during the period of employment within the 12-month period. If a member did not receive compensation for service in any of the 12 months immediately preceding the month of death, or if the member was employed by a subdivision that was not participating on a full-salary basis for 12 calendar months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the rate of compensation payable to the member during the month of death.

(c) The current annual salary of a member included in the extended coverage of the supplemental death benefit program is computed in the manner provided by Subsection



(b) ~~[of this section]~~ but as if the member had died during the first month of extended coverage.

(d) If a member, because of a change in employment, makes contributions to the retirement system during the same month as an employee of more than one subdivision participating in the supplemental death benefits fund, a death benefit is payable only on the basis of the member's most recent employment. If a member, because of simultaneous employment by more than one subdivision, makes contributions to the retirement system during the same month as an employee of more than one subdivision participating in the supplemental death benefits fund, a death benefit is payable on the basis of the member's employment by each subdivision participating in the fund.

(e) The board of trustees by rule may require such proof of compensation and periods of employment as it finds necessary.

Sec. 844.504 ~~[54.504]~~. RETIREE SUPPLEMENTAL DEATH BENEFIT. If a retiree dies whose most recent employment as a member of the retirement system was with a subdivision that has elected to provide, and continues to provide, postretirement supplemental death benefits, a lump-sum supplemental death benefit is payable from the fund in the amount of \$2,500. If a retiree dies who was employed at the time of retirement by more than one subdivision that has elected to provide, and continues to provide, postretirement supplemental death benefits, the financing of the lump-sum benefit shall be prorated among the employing subdivisions participating in the fund.

Sec. 844.505 ~~[54.505]~~. BENEFICIARY OF SUPPLEMENTAL DEATH BENEFIT. (a) Unless a member has directed otherwise on a form prescribed by the board of trustees and filed with the retirement system:

(1) a supplemental death benefit under Section 844.508 ~~[54.508 of this subtitle]~~ is payable to the person entitled to receive the decedent's accumulated contributions, unless the decedent was eligible under Section 844.105 ~~[54.105 of this subtitle]~~ to select an optional service retirement annuity, in which case the benefit is payable to the beneficiary designated by the decedent or, if no designation was made, to the person entitled under that section to receive an optional annuity; and

(2) a supplemental death benefit under Section 844.504 ~~[54.504 of this subtitle]~~ is payable to a person entitled to receive any remaining payments of the decedent's annuity.

(b) If a person entitled under this section to receive a supplemental death benefit does not survive the member or retiree covered by the supplemental death benefit program, the benefit is payable to the estate of the covered member or retiree.

[Sections 844.506–844.600 ~~[54.506–54.600]~~ reserved for expansion]

#### SUBCHAPTER G. OPTIONAL ADDITIONAL SUBDIVISION CONTRIBUTIONS OR DECREASE IN CREDITS

Sec. 844.601 ~~[54.601]~~. CONDITIONS PERMITTING ADDITIONAL SUBDIVISION CONTRIBUTIONS OR DECREASE IN CREDITS. (a) The governing body of a participating subdivision by order or resolution may, on the terms provided by this section:

(1) authorize additional subdivision contributions under Section 844.602 ~~[54.602 of this subtitle]~~; or

(2) authorize a reduction in multiple matching credits under Section 844.603 ~~[54.603 of this subtitle]~~.

(b) An order or resolution under Subsection (a) ~~[of this section]~~ may be adopted only if the actuary determines that subdivision contributions at the rate prescribed by Section 845.404(a)(2) ~~[55.404(a)(2) of this subtitle]~~ are inadequate to fund all obligations charged against the subdivision's account in the subdivision accumulation fund.

(c) An order or resolution under this section may not take effect until approved by the board of trustees as meeting the requirements of this section.

Sec. 844.602 [54.602]. OPTIONAL ADDITIONAL SUBDIVISION CONTRIBUTIONS. (a) If the actuary makes the determination provided in Section 844.601(b) [54.601(b) of this subtitle], the actuary [he] shall annually determine the rate or amount of subdivision contributions necessary to make the financing arrangement adequate.

(b) "Additional subdivision contributions" as used in this section means a rate or amount of contribution that is in addition to the subdivision contributions prescribed by Section 845.404(a)(2) [55.404(a)(2) of this subtitle].

(c) The order or resolution adopted under this section shall specify the rate or amount of additional subdivision contributions to be made by the subdivision, and such rate or amount shall be effective for one calendar year only.

Sec. 844.603 [54.603]. OPTIONAL DECREASE IN CREDITS. (a) If the actuary makes the determination provided in Section 844.601(b) [54.601(b)] concerning a participating subdivision, the actuary [he] shall further determine what lower percentage, used in determining multiple matching credits under Section 843.403(c) [53.403(c) of this subtitle], of contributions made after the effective date of such reduction is necessary to make the financing arrangement adequate.

(b) An order or resolution reducing multiple matching credits shall apply to all members who, after the effective date of such order or resolution, perform current service for the affected subdivision, and the lower percentage specified in the order or resolution shall not be below the percentage determined by the actuary.

Sec. 844.604 [54.604]. ADDITIONAL CONTRIBUTIONS AND DECREASE IN MULTIPLE MATCHING CREDITS MAY BE COMBINED. The governing body of the subdivision may provide for additional subdivision contributions in conjunction with a reduction in multiple matching credits.

Sec. 844.605 [54.605]. SUPPLEMENTAL CONTRIBUTION RATE FOR CERTAIN SUBDIVISIONS. (a) If the actuary determines that the obligations of a participating subdivision to the subdivision accumulation fund cannot be amortized within a period of 40 years or that the subdivision would have an amortization period of more than 30 years if it adopted the optional benefit eligibility plan authorized by Section 844.207 [54.207 of this subtitle], the governing body of the subdivision may by order or resolution provide additional contributions by adopting a supplemental contribution rate under this section to reduce the funding period or finance the optional benefit eligibility plan.

(b) A supplemental contribution rate is the rate of contribution by a subdivision to its account in the subdivision accumulation fund, in addition to the contributions provided under Section 845.404(a)(2) [55.404(a)(2) of this subtitle], that the actuary determines and certifies is required, together with the contributions provided under Section 845.404(a)(2) [55.404(a)(2)], to amortize the obligations of the subdivision to the subdivision accumulation fund within a period of 30 years. A supplemental contribution rate may not exceed three percent of covered payroll.

(c) A supplemental contribution rate adopted by a participating subdivision may not be increased unless the actuary subsequently determines that the rate previously adopted, together with the contributions provided under Section 845.404(a)(2) [55.404(a)(2) of this subtitle], will not amortize the obligations of the subdivision to the subdivision accumulation fund within a period of 40 years after [from] the actuarial study date. If the actuary makes the determination specified by this subsection, the governing body of the subdivision may adopt another supplemental contribution rate under this section.

(d) A supplemental contribution rate adopted by the governing body of a subdivision expires at the end of the 30th calendar year after its effective date, or at the end of any earlier calendar year in which the actuary determines and certifies, after the annual asset valuation under Section 845.206 [55.206 of this subtitle], that all obligations of the subdivision to the subdivision accumulation fund can be amortized within a period of 30 years on the basis of contributions provided by the subdivision under Section 845.404(a)(2) [55.404(a)(2) of this subtitle].

(e) A subdivision that adopts a supplemental contribution rate under this section must concurrently adopt the optional benefit eligibility plan authorized by Section 844.207

~~[54.207 of this subtitle]~~ if the subdivision has not already adopted the plan and if the resulting amortization period does not exceed 30 years.

Sec. ~~844.606~~ ~~[54.606]~~. ADDITIONAL OPTIONAL DECREASE IN CREDITS. (a) If the actuary determines that the obligations of a participating subdivision to the subdivision accumulation fund cannot be amortized within a period of 40 years, the governing body of the subdivision may by order or resolution reduce multiple matching credits for contributions made after the effective date of the reduction.

(b) The actuary shall determine what lower percentage to be used in determining multiple matching credits under Section ~~843.403(c)~~ ~~[53.403(c) of this subtitle]~~ for contributions made after the effective date of the reduction is required to amortize the obligations of the subdivision to the subdivision accumulation fund within a period of 30 years.

(c) The effective date of a reduction in the percentage used in determining multiple matching credits is January 1 of the year following the year in which the order or resolution is adopted.

(d) The governing body of a participating subdivision may reduce the percentage used in determining multiple matching credits under Section ~~843.403(c)~~ ~~[53.403(c) of this subtitle]~~ to zero percent for contributions made after the effective date of the reduction, even if the resulting amortization period exceeds 30 years.

(e) The governing body of a participating subdivision may reduce the percentage used in determining multiple matching credits in conjunction with the adoption of a supplemental contribution rate under Section ~~844.605~~ ~~[54.605 of this subtitle]~~ in order to amortize the obligations of the subdivision to the subdivision accumulation fund within a period of 30 years.

CHAPTER 845 [55]. ADMINISTRATION

SUBCHAPTER A. BOARD OF TRUSTEES

Sec. 845.001 [55.001]. COMPOSITION OF BOARD OF TRUSTEES

Sec. 845.002 [55.002]. APPOINTMENT

Sec. 845.003 [55.003]. ELIGIBILITY

Sec. 845.004 [55.004]. TERM OF OFFICE

Sec. 845.005 [55.005]. OATH OF OFFICE

Sec. 845.006 [55.006]. APPLICATION OF SUNSET ACT

Sec. 845.007 [55.007]. MEETINGS

Sec. 845.008 [55.008]. COMPENSATION; EXPENSES

Sec. 845.009 [55.009]. VOTING

[Sections 845.010–845.100 [55.010–55.100] reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

Sec. 845.101 [55.101]. ADMINISTRATION

Sec. 845.102 [55.102]. RULEMAKING

Sec. 845.103 [55.103]. ADMINISTERING SYSTEM ASSETS

Sec. 845.104 [55.104]. ACCEPTING GIFT, GRANT, OR BEQUEST

Sec. 845.105 [55.105]. INDEBTEDNESS; PAYMENT

Sec. 845.106 [55.106]. GRANTS AND PAYMENT OF BENEFITS

Sec. 845.107 [55.107]. AUDIT

Sec. 845.108 [55.108]. DESIGNATION OF AUTHORITY TO SIGN VOUCHERS

Sec. 845.109 [55.109]. DEPOSITORIES

Sec. 845.110 [55.110]. ADOPTING RATES AND TABLES

Sec. 845.111 [55.111]. CERTIFICATION OF CURRENT INTEREST RATE

Sec. 845.112 [55.112]. RECORDS OF BOARD OF TRUSTEES

Sec. 845.113 [55.113]. OFFICE

Sec. 845.114 [55.114]. OBTAINING INFORMATION

[Sections 845.115–845.200 [55.115–55.200] reserved for expansion]

SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

Sec. 845.201 [55.201]. OFFICERS

Sec. 845.202 [55.202]. DIRECTOR

Sec. 845.203 [55.203]. LEGAL ADVISER

Sec. 845.204 [55.204]. MEDICAL BOARD

Sec. 845.205 [55.205]. OTHER PHYSICIANS

Sec. 845.206 [55.206]. ACTUARY

Sec. 845.207 [55.207]. OTHER EMPLOYEES

Sec. 845.208 [55.208]. COMPENSATION OF EMPLOYEES

Sec. 845.209 [55.209]. SURETY BOND

[Sections 845.210–845.300 [55.210–55.300] reserved for expansion]

SUBCHAPTER D. MANAGEMENT OF ASSETS

Sec. 845.301 [~~55.301~~]. INVESTMENT OF ASSETS

Sec. 845.302 [~~55.302~~]. RESTRICTIONS ON INVESTMENTS

Sec. 845.303 [~~55.303~~]. DUTY OF CARE

Sec. 845.304 [~~55.304~~]. CASH ON HAND

Sec. 845.305 [~~55.305~~]. CREDITING SYSTEM ASSETS

Sec. 845.306 [~~55.306~~]. EMPLOYEES SAVING FUND

Sec. 845.307 [~~55.307~~]. SUBDIVISION ACCUMULATION FUND

Sec. 845.308 [~~55.308~~]. CURRENT SERVICE ANNUITY RESERVE FUND

Sec. 845.309 [~~55.309~~]. INTEREST FUND

Sec. 845.310 [~~55.310~~]. ENDOWMENT FUND

Sec. 845.311 [~~55.311~~]. EXPENSE FUND

Sec. 845.312 [~~55.311~~]. SUPPLEMENTAL DEATH BENEFITS FUND

Sec. 845.313 [~~55.312~~]. DISBURSEMENTS

Sec. 845.314 [~~55.313~~]. INTEREST RATES

Sec. 845.315 [~~55.314~~]. TRANSFER OF ASSETS FROM INTEREST FUND

Sec. 845.316 [~~55.315~~]. TRANSFER OF ASSETS ON RETIREMENT OR  
RESTORATION TO ACTIVE DUTY

Sec. 845.317 [~~55.316~~]. PAYMENT TO FORMERLY PARTICIPATING SUBDIVISION

Sec. 845.318 [~~55.317~~]. CONSOLIDATION OF COUNTY'S ACCOUNTS IN  
SUBDIVISION ACCUMULATION FUND

[Sections 845.319–845.400 [~~55.318–55.400~~] reserved for expansion]

#### SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS

Sec. 845.401 [~~55.401~~]. COLLECTION OF MEMBERSHIP FEES

Sec. 845.402 [~~55.402~~]. MEMBER CONTRIBUTIONS

Sec. 845.403 [~~55.403~~]. COLLECTION OF MEMBER CONTRIBUTIONS

Sec. 845.404 [~~55.404~~]. COLLECTION OF SUBDIVISION CONTRIBUTIONS

Sec. 845.405 [~~55.405~~]. WAR PERIOD CONTRIBUTIONS

Sec. 845.406 [~~55.406~~]. SUPPLEMENTAL DEATH BENEFITS PROGRAM

[Sections 845.407–845.500 [~~55.407–55.500~~] reserved for expansion]

#### SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

Sec. 845.501 [~~55.501~~]. STATEMENT OF AMOUNT IN ACCOUNT

Sec. 845.502 [~~55.502~~]. INTEREST IN ASSETS

Sec. 845.503 [~~55.503~~]. FORFEITURE OF CONTRIBUTIONS

### CHAPTER 845 [55]. ADMINISTRATION

#### SUBCHAPTER A. BOARD OF TRUSTEES

Sec. 845.001 [~~55.001~~]. COMPOSITION OF BOARD OF TRUSTEES. The board of trustees is composed of nine members.

Sec. 845.002 [~~55.002~~]. APPOINTMENT. The governor shall appoint the members of the board of trustees with the advice and consent of the senate.

Sec. 845.003 [55.003]. ELIGIBILITY. (a) To be eligible to serve as a trustee a person must be:

- (1) a member of the retirement system; and
- (2) an employee of a participating subdivision.

(b) If a person serving as a trustee ceases to be an employee of a participating subdivision or fails to attend four consecutive regular meetings of the board of trustees, the person may not act as a trustee and shall vacate the office of trustee.

Sec. 845.004 [55.004]. TERM OF OFFICE. Trustees hold office for staggered terms of six years, with the terms of three trustees expiring December 31 of each odd-numbered year.

Sec. 845.005 [55.005]. OATH OF OFFICE. Before taking office as a trustee, a person shall take the constitutional oath prescribed for officers of the state.

Sec. 845.006 [55.006]. APPLICATION OF SUNSET ACT. The board of trustees of the Texas County and District Retirement System is subject to the Texas Sunset Act, [(Chapter 325, Government Code)], but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished September 1, 1991, and every 12th year after that date are reviewed.

Sec. 845.007 [55.007]. MEETINGS. (a) The board of trustees shall hold regular meetings in March, June, September, and December of each year and special meetings when called by the director.

(b) Before the fifth day preceding the day of a special meeting, the director shall give written notice of the meeting to each trustee unless notice is waived.

(c) All meetings of the board must be open to the public.

(d) The board shall hold its meetings in the office of the board or in a place specified by the notice of the meeting.

Sec. 845.008 [55.008]. COMPENSATION; EXPENSES. Each trustee serves without compensation but is entitled to:

- (1) reimbursement for reasonable traveling expenses incurred in attending board meetings or authorized committee and association meetings or incurred in the performance of other official board duties; and
- (2) payment of an amount equal to any compensation withheld by the trustee's employing subdivision because of the trustee's attendance at board meetings.

Sec. 845.009 [55.009]. VOTING. (a) Each trustee is entitled to one vote.

(b) At any meeting of the board, five or more concurring votes are necessary for a decision or action by the board.

[Sections 845.010–845.100 [55.010–55.100] reserved for expansion]

#### SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

Sec. 845.101 [55.101]. ADMINISTRATION. (a) The retirement system is a trust.

(b) The board of trustees is responsible for the administration of the retirement system.

Sec. 845.102 [55.102]. RULEMAKING. The board of trustees shall adopt rules and perform reasonable activities necessary or desirable for efficient administration of the system.

Sec. 845.103 [55.103]. ADMINISTERING SYSTEM ASSETS. (a) The board of trustees may sell, assign, exchange, or trade and transfer any security in which the retirement system's assets are invested. The board may use or reinvest the proceeds as the board determines that the system's needs require.

(b) In handling the funds of the retirement system, the board of trustees has all powers and duties granted to the State Depository Board.

Sec. 845.104 [55.104]. ACCEPTING GIFT, GRANT, OR BEQUEST. The board of trustees shall accept a gift, grant, or bequest of money or securities:

(1) for the purpose designated by the grantor if the purpose provides an endowment or retirement benefits to some or all participating employees or annuitants of the retirement system; or

(2) otherwise, for deposit in the endowment fund.

Sec. 845.105 [55.105]. INDEBTEDNESS; PAYMENT. (a) The board of trustees may:

(1) incur indebtedness;

(2) on the credit of the retirement system, borrow money to pay expenses incident to the system's operation;

(3) renew, extend, or refund its indebtedness; or

(4) issue and sell negotiable promissory notes or negotiable bonds of the system.

(b) A note or bond issued under this section must mature before the 20th anniversary of the issuance of the note or bond. The rate of interest on the note or bond may not exceed six percent a year.

(c) The board shall charge a note or bond issued under this section against the system's expense fund and shall pay the note or bond from that fund. The total indebtedness against the expense fund may not exceed \$100,000 at any time.

(d) A note or bond issued under this section must expressly state that the note or bond is not an obligation of this state.

Sec. 845.106 [55.106]. GRANTS AND PAYMENT OF BENEFITS. The board of trustees, in accordance with this subtitle, shall consider all applications for annuities and benefits and shall decide whether to grant the annuities and benefits. The board may suspend one or more payments in accordance with this subtitle.

Sec. 845.107 [55.107]. AUDIT. Annually, or more often, the board of trustees shall have the accounts of the retirement system audited by a certified public accountant.

Sec. 845.108 [55.108]. DESIGNATION OF AUTHORITY TO SIGN VOUCHERS. The board of trustees by resolution shall designate one or more representatives who have authority to sign vouchers for payments from the assets of the retirement system.

Sec. 845.109 [55.109]. DEPOSITORIES. The board of trustees shall designate financial institutions to qualify and serve the retirement system as depositories in accordance with *Subchapter C of Chapter 404 [Article 2525 et seq., Revised Civil Statutes of Texas, 1925, as amended]*.

Sec. 845.110 [55.110]. ADOPTING RATES AND TABLES. (a) The board of trustees shall adopt rates and tables that the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality and service experience of the system's members and annuitants.

(b) Based on recommendations of the actuary, the board of trustees shall adopt rates and tables necessary to determine the supplemental death benefits contribution rates for each subdivision participating in the supplemental death benefits fund. The initial rates and tables become effective on the date that the fund and coverage become operative.

Sec. 845.111 [55.111]. CERTIFICATION OF CURRENT INTEREST RATE. (a) The board of trustees shall certify the current interest rate as computed in accordance with Section 845.914(c) [55.913(c) of this subtitle] and approved in writing by the actuary.

(b) The board shall notify each participating subdivision of the current interest rate.

Sec. 845.112 [55.112]. RECORDS OF BOARD OF TRUSTEES. (a) The board of trustees shall keep, in convenient form, data necessary for required computations and valuations by the actuary.

(b) The board shall keep a permanent record of all of its proceedings.

(c) Records of the board are open to the public.

Sec. 845.113 [55.113]. OFFICE. (a) The board of trustees shall maintain the offices of the retirement system in Austin and may contract for and construct a building to house those offices.

(b) The board shall keep the books and records of the retirement system in those offices.

Sec. 845.114 [55.114]. OBTAINING INFORMATION. (a) The board of trustees shall obtain from a member or a participating subdivision information necessary for the proper operation of the retirement system.

(b) The board may require reports from the participating subdivisions for the efficient handling of members' deposits. The treasurer or other payroll disbursing officer of each participating subdivision shall:

- (1) prepare the reports in the form specified by the board; and
- (2) file the reports at the time specified by the board.

[Sections 845.115–845.200 [55.115–55.200] reserved for expansion]

#### SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

Sec. 845.201 [55.201]. OFFICERS. (a) The board of trustees annually shall elect from members of the board:

- (1) a chairman; and
- (2) a vice-chairman.

(b) The board may appoint the director or a member of the board as secretary.

Sec. 845.202 [55.202]. DIRECTOR. (a) The board of trustees shall appoint a director.

(b) The director shall:

- (1) manage and administer the retirement system under the supervision and direction of the board; and
- (2) invest the assets of the system.

(c) The board of trustees may delegate to the director powers and duties in addition to those stated by Subsection (b) [~~of this section~~].

(d) The director annually shall:

- (1) prepare an itemized budget showing the amount required to pay the retirement system's expenses for the following fiscal year; and
- (2) submit the report to the board for review, amendment, and adoption.

Sec. 845.203 [55.203]. LEGAL ADVISER. (a) The board of trustees shall appoint an attorney.

(b) The attorney shall act as the legal adviser to the board and shall represent the system in all litigation.

Sec. 845.204 [55.204]. MEDICAL BOARD. (a) The board of trustees shall designate a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in the state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

- (1) review all medical examinations required by this subtitle;
- (2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and
- (3) report in writing to the board of trustees its conclusions and recommendations on all matters referred to it.

Sec. 845.205 [55.205]. OTHER PHYSICIANS. The board of trustees may employ physicians in addition to the medical board to report on special cases.



Sec. ~~845.206~~ [55.206]. ACTUARY. (a) The board of trustees shall appoint an actuary.

(b) The actuary shall perform duties in connection with advising the board concerning operation of the system's funds.

(c) At least once every five years the actuary shall:

(1) make a general investigation of the mortality and service experience of the members and annuitants of the system; and

(2) on the basis of the results of the investigation, recommend for adoption by the board required tables and rates.

(d) On the basis of tables and rates adopted by the board, the actuary shall:

(1) compute the current interest rate in accordance with Section ~~845.314~~ [55.313 of this subtitle];

(2) certify the amount of each annuity and benefit granted by the board; and

(3) make an annual valuation of the assets and liabilities of the funds of the retirement system.

Sec. ~~845.207~~ [55.207]. OTHER EMPLOYEES. The board of trustees shall employ actuarial, clerical, legal, medical, and other assistants required for the efficient administration of the retirement system.

Sec. ~~845.208~~ [55.208]. COMPENSATION OF EMPLOYEES. The board of trustees shall determine the amount of compensation that employees of the retirement system receive.

Sec. ~~845.209~~ [55.209]. SURETY BOND. (a) The board of trustees shall require a surety bond for the director and may require a surety bond for other employees of the retirement system. The board shall determine the amount of a bond that is required.

(b) A bond must be conditioned on a person's faithful performance of the duties of the person's office.

(c) The board shall secure a required bond and shall pay for the bond from the system's assets.

[Sections ~~845.210–845.300~~ [55.210–55.300] reserved for expansion]

#### SUBCHAPTER D. MANAGEMENT OF ASSETS

Sec. ~~845.301~~ [55.301]. INVESTMENT OF ASSETS. The board of trustees shall invest and reinvest the assets of the retirement system without distinction as to their source in:

(1) interest-bearing bonds or other evidences of indebtedness of this state, a county, school district, city, or other municipal corporation of this state, the United States, or an authority or an agency of the United States;

(2) securities for which the United States or any authority or agency of the United States guarantees the payment of principal and interest;

(3) interest-bearing bonds, notes, or other evidences of indebtedness that are issued by a company:

(A) incorporated in the United States and that are rated "A" or better by one or more nationally recognized rating agencies approved by the board; or

(B) in whose stock the retirement system may invest as provided by Subdivision (4) [of this subsection];

(4) common or preferred stocks of a company incorporated in the United States that has paid cash dividends on its common stock for 10 consecutive years immediately before the date of purchase and, unless the stocks are bank or insurance stocks, that is listed on an exchange registered with the Securities and Exchange Commission or its successor; or

(5) obligations issued, assumed, or guaranteed by the African Development Bank.

Sec. ~~845.302~~ [55.302]. RESTRICTIONS ON INVESTMENTS. (a) The board of trustees may not invest more than 20 percent of the retirement system's total assets in preferred and common stocks of corporations.

(b) The board may not invest more than one percent of the total assets of the system in the stock of one corporation.

(c) The system may not own more than five percent of the voting stock of one corporation.

Sec. ~~845.303~~ [55.303]. DUTY OF CARE. In making investments for the retirement system, the board of trustees shall exercise the judgment and care, under the circumstances, that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, considering the probable income from the securities and probable safety of their capital.

Sec. ~~845.304~~ [55.304]. CASH ON HAND. The board of trustees shall determine the amount of cash on hand required to pay benefits and the expenses of the retirement system.

Sec. ~~845.305~~ [55.305]. CREDITING SYSTEM ASSETS. (a) The retirement system shall immediately deposit all money received by the system with a depository designated under Section ~~845.109~~ [55.109 of this subtitle].

(b) When securities of the retirement system are received, the system shall deposit the securities in trust with a depository designated under Section ~~845.109~~ [55.109 of this subtitle]. The depository shall provide adequate safe deposit facilities for the preservation of the securities.

(c) All assets of the retirement system shall be credited according to the purpose for which they are held to one of the following funds:

- (1) employees saving fund;
- (2) subdivision accumulation fund;
- (3) current service annuity reserve fund;
- (4) interest fund;
- (5) endowment fund;
- (6) expense fund; or
- (7) supplemental death benefits fund.

Sec. ~~845.306~~ [55.306]. EMPLOYEES SAVING FUND. (a) The retirement system shall deposit in a member's individual account in the employees saving fund:

- (1) the amount of contributions to the retirement system deducted from the member's compensation;
- (2) interest allowed on money in the account in accordance with this subtitle;
- (3) an amount deposited by a member in accordance with Section ~~845.405~~ [55.405 of this subtitle] to establish credited service during a time of war;
- (4) the portion of a deposit required by Section ~~843.003~~ [53.003 of this subtitle] to reinstate credited service previously terminated that represents the amount withdrawn;
- (5) the amount deposited in accordance with Section ~~843.301(b)~~ [53.301(b)] or ~~843.403(b)~~ [53.403(b) of this subtitle] to establish credit for prior or current service for a person who became a member in accordance with *Subchapter* [Subtitle] C of Chapter ~~842~~ [52 of this subtitle];
- (6) the amount deposited by a member in accordance with Section ~~843.601(e)~~ [53.601(e) of this subtitle] to establish current service credit for military service;
- (7) the amount deposited by a member in accordance with Section ~~843.501~~ [53.501 of this subtitle] to establish credit for legislative service; and
- (8) the amount deposited by a person to become a member in accordance with Section ~~842.103~~ [52.103 of this subtitle].

(b) On December 31 of each year, the retirement system shall credit to each member's individual account interest as allowed by this subtitle on the amount of accumulated deposits credited to the member's account on January 1 of that year.

(c) The retirement system may not pay interest on money in a person's individual account:

(1) for a part of a year; or

(2) after the person's membership has been terminated in accordance with Section ~~842.109~~ [52.109 of this subtitle] because of absence from service.

Sec. ~~845.307~~ [55.307]. SUBDIVISION ACCUMULATION FUND. (a) The retirement system shall deposit in the account of a participating subdivision in the subdivision accumulation fund:

(1) all benefit contributions made by the subdivision to the system pursuant to Section ~~845.404(a)(2)~~ [55.404(a)(2)];

(2) interest allowed on money in the fund as provided by this subtitle;

(3) amounts deposited by the subdivision in accordance with Section ~~845.405~~ [55.405 of this subtitle] to establish credited service during a time of war;

(4) the withdrawal charge for reinstatement of credited service as provided by Section ~~843.003~~ [53.003 of this subtitle];

(5) the amount of matching contributions made by a subdivision in accordance with Section ~~843.301(c)~~ [53.301(c)] or ~~843.402(c)~~ [53.402(c) of this subtitle] to establish credit for prior or current service for a person who became a member in accordance with Subchapter C of Chapter ~~842~~ [52 of this subtitle];

(6) the amount of matching contributions made by a subdivision in accordance with Section ~~843.601(f)~~ [53.601(f) of this subtitle] to establish current service credit for military service;

(7) the amount of matching contributions made by a subdivision in accordance with Section ~~843.501~~ [53.501] to establish credit for legislative service; and

(8) the amount deposited by a subdivision for a person to become a member in accordance with Section ~~842.103~~ [52.103 of this subtitle].

(b) Subject to Subsection (c) [of this section], the retirement system shall pay from the subdivision accumulation fund all payments under prior service annuities granted before January 1, 1978, and currently in force and all payments under supplemental annuities from credits granted by a participating subdivision. The retirement system shall charge payments from the fund to the participating subdivision's account.

(c) The board of trustees may proportionately reduce all payments under prior service annuities and supplemental annuities at any time and for a period necessary to prevent payments under those annuities for a year from exceeding the amount available in the participating subdivision's account.

(d) If credited service previously forfeited is reinstated in accordance with Section ~~843.003~~ [53.003 of this subtitle], the retirement system shall charge the subdivision's account in the subdivision accumulation fund with the necessary reserves to fund the credits restored to the member.

Sec. ~~845.308~~ [55.308]. CURRENT SERVICE ANNUITY RESERVE FUND. (a) The retirement system shall deposit and hold in the current service annuity reserve fund all reserves for:

(1) current service annuities in force that were granted before January 1, 1978; and

(2) all basic annuities granted on or after January 1, 1978.

(b) The retirement system shall pay from the current service annuity reserve fund annuities described by Subsection (a) [of this section] and all benefits in lieu of those annuities as provided by this subtitle.

Sec. ~~845.309~~ [55.309]. INTEREST FUND. (a) The retirement system shall deposit in the interest fund all income, interest, and dividends from deposits and investments authorized by this subtitle.

(b) On December 31 of each year, the system shall transfer money from the interest fund in accordance with Section ~~845.915~~ ~~[55.914 of this subtitle]~~.

Sec. ~~845.910~~ ~~[55.910]~~. ENDOWMENT FUND. (a) The retirement system shall deposit and hold in the endowment fund gifts, awards, funds, and assets delivered to the retirement system:

- (1) that are not specifically required by the system's other funds; or
- (2) that are designated by the grantor as perpetual endowments for the system.

(b) The endowment fund consists of:

- (1) the general reserves account;
- (2) the distributive benefits account;
- (3) the perpetual endowment account; and
- (4) other special accounts that the board of trustees by resolution establishes.

(c) The system shall credit to the general reserves account and to the distributive benefits account interest in accordance with Section ~~845.915~~ ~~[55.914 of this subtitle]~~.

(d) The board of trustees shall transfer money from the general reserves account to the expense fund in accordance with Section ~~845.911(b)~~ ~~[55.911(b) of this subtitle]~~.

(e) If the board of trustees determines that the amount credited to the distributive benefit account on December 31 of any year is sufficient to do so, the board by resolution may:

(1) authorize the distribution and payment of all or part of the money credited to the account to persons who were annuitants on that day in the ratio of the rate of the monthly benefit of each annuitant to the total of all annuity payments made by the system for the final month of the year; or

(2) authorize the distribution of all or part of the amount credited to the account to:

(A) each member's individual account in the employees saving fund as supplemental interest in the ratio of the amount of current interest paid on the individual's account to the current interest paid to all individual accounts for the year; and

(B) each participating subdivision's account in the subdivision accumulation fund as supplemental interest in the ratio of the current interest allowed on the account of the subdivision to the total current interest paid to all subdivisions' accounts for the year.

(f) The retirement system shall deposit and hold in the perpetual endowment account funds, gifts, and awards that the grantors designate as perpetual endowment for the retirement system and money forfeited to the retirement system as provided by Section ~~845.509~~ ~~[55.609 of this subtitle]~~.

Sec. ~~845.911~~ ~~[55.911]~~. EXPENSE FUND. (a) The board of trustees shall deposit in the expense fund:

(1) membership fees paid in accordance with Section ~~845.401~~ ~~[55.401 of this subtitle]~~; and

(2) subdivision contributions for expenses of the retirement system paid in accordance with Section ~~845.404~~ ~~[55.404 of this subtitle]~~.

(b) The board of trustees by resolution recorded in its minutes shall transfer from the general reserves account of the endowment fund to the expense fund the amount that exceeds the amount needed to provide adequate reserves against insufficient earnings on investments and against special and contingency requirements of other funds of the system and that is needed to pay the system's estimated expenses for the fiscal year.

(c) The retirement system shall pay from the expense fund:

(1) administrative and maintenance expenses of the system; and

(2) notes and bonds issued in accordance with Section ~~845.105~~ ~~[55.105 of this subtitle]~~.

(d) If the amount of the system's estimated expenses exceeds the amount in the general reserves account available for administrative expenses, the board of trustees, by a resolution recorded in its minutes, shall require an amount equal to the difference from

participating subdivisions and members. The board shall collect the required amount and deposit the amount collected in the expense fund.

Sec. 845.312 [55.311]. SUPPLEMENTAL DEATH BENEFITS FUND. (a) The retirement system shall deposit in the supplemental death benefits fund contributions paid by subdivisions to the retirement system to provide supplemental death benefits in accordance with Section 845.406 [55.406 of this subtitle]. The retirement system may not establish separate accounts in the fund for subdivisions participating in the fund but shall credit contributions to a single account.

(b) The retirement system shall pay supplemental death benefits only from money in the supplemental death benefits fund, and the benefits are not an obligation of other funds of the system.

(c) The supplemental death benefits fund may become operative only after a sufficient number of subdivisions elect to participate in the fund so that 4,000 members or more are covered by the fund.

(d) The board of trustees shall determine the operative date of the fund.

(e) The effective participation date of a subdivision is:

(1) the operative date of the fund if the subdivision elected to participate in the fund on or before the fund's operative date; or

(2) the first day of any calendar month after the month in which the subdivision notifies the board of its election to enter the fund.

(f) The board of trustees shall notify each subdivision of its effective participation date.

Sec. 845.313 [55.312]. DISBURSEMENTS. (a) Disbursements from the assets of the retirement system may be made only on vouchers signed by the person designated for that purpose in accordance with Section 845.108 [55.108 of this subtitle].

(b) A person designated to sign vouchers may draw checks or warrants only on proper authorization from the board of trustees, recorded in the official minutes of the meetings of the board.

(c) When a voucher is properly signed, a depository with which assets of the system are deposited shall accept and pay the voucher. The depository is released from liability for payment made on the voucher.

Sec. 845.314 [55.313]. INTEREST RATES. (a) Unless this subtitle expressly states that interest is computed using the current interest rate or another specified rate of interest, interest is computed using the rate of:

(1) three percent a year compounded annually for periods before January 1, 1977;

(2) four percent a year compounded annually for periods after December 31, 1976, but before January 1, 1982;

(3) four and one-half percent a year compounded annually for periods after December 31, 1981, but before January 1, 1985; and

(4) seven percent a year compounded annually for periods after December 31, 1984.

(b) Subsection (a) [of this section] does not change the amount of an annuity on which a monthly benefit payment was made before October 1, 1985, and does not require recomputation of that amount; but, the board of trustees may increase by as much as 12½ percent the amount payable each month after October 1, 1985, by reason of basic and supplement annuities that [which] were in effect during and for which a monthly benefit was paid by the system for the month of September, 1985.

(c) The current interest rate is the lesser of:

(1) the interest rate prescribed by Subsection (a) [of this section]; or

(2) the interest rate computed by:

(A) adding the mean amount in the current annuity reserve fund during the year and an amount equal to the amount in the subdivision accumulation fund on January 1 of the year;

(B) computing, in accordance with Subsection (a) ~~[of this section]~~, the amount of interest on the sum obtained under Paragraph (A) ~~[of this subdivision]~~;

(C) subtracting the amount computed under Paragraph (B) ~~[of this subdivision]~~ from an amount equal to the amount in the interest fund on December 31 of the year, before transfers of interest to other funds are made;

(D) adding an amount equal to the amount in the endowment fund on January 1 of the year and an amount equal to the sum of the accumulated deposits in the employees saving fund on January 1 of the year of all persons who are members on December 31 of the year, before any transfers for retirements effective December 31 are made; and

(E) dividing the amount computed under Paragraph (C) ~~[of this subdivision]~~ by the amount computed under Paragraph (D) ~~[of this subdivision]~~ and expressing the result to the nearest one-tenth of one percent.

Sec. ~~845.315~~ [55.314]. TRANSFER OF ASSETS FROM INTEREST FUND. (a) On December 31 of each year, the board of trustees shall transfer from the interest fund the following amounts:

(1) to the current service annuity reserve fund, interest on the mean amount in the current service annuity reserve fund during that year;

(2) to the subdivision accumulation fund, interest on the amount in the subdivision accumulation fund on January 1 of that year;

(3) to the general reserves account of the endowment fund, current interest on the amount in the endowment fund on January 1 of that year;

(4) to the employees saving fund, current interest on the sum of the accumulated deposits in the employees saving fund credited on January 1 of that year to all persons who are members on December 31 of that year before any transfers for retirement effective December 31 of that year are made; and

(5) to the supplemental death benefits fund, interest on the mean amount in the supplemental death benefits fund during that year.

(b) The board of trustees shall transfer to the general reserves account of the endowment fund the portion of the amount remaining in the interest fund after the transfers required by Subsection (a) ~~[of this section]~~ are made that the board of trustees determines is necessary:

(1) to provide adequate reserves against insufficient future earnings on investments to allow interest on the system's funds;

(2) to provide adequate reserves against special and contingency requirements of other funds of the system; and

(3) to provide the amount required for the administrative expenses of the system for the following year.

(c) After the requirements of the general reserves account of the endowment fund have been satisfied, the board of trustees shall transfer any amount remaining in the interest fund to the distributive benefits account of the endowment fund.

Sec. ~~845.316~~ [55.315]. TRANSFER OF ASSETS ON RETIREMENT OR RESTORATION TO ACTIVE DUTY. (a) When a member retires, the retirement system shall transfer:

(1) from the employees saving fund to the current service annuity reserve fund, the member's accumulated deposits; and

(2) from the subdivision accumulation fund to the current service annuity reserve fund, an amount equal to the member's accumulated current service credit.

(b) If the retiring member's accumulated deposits are the result of service for more than one participating subdivision, the retirement system shall reduce the amount credited to the account of each subdivision by the amount chargeable to the subdivision for the member.

(c) If a person who receives disability benefits and who is less than 60 years old returns to active service, the board of trustees shall transfer the balance of the person's retirement reserve from the current service annuity reserve fund to the employees saving fund and to the subdivision accumulation fund in proportion to the original amount transferred to the current service annuity reserve fund from those funds.

Sec. 845.317 [55.316]. PAYMENT TO FORMERLY PARTICIPATING SUBDIVISION. (a) If a participating subdivision has no employees who are members of the retirement system and has no present or potential liabilities resulting from the participation of former employees, the subdivision's participation in the system stops and the system shall repay to the subdivision on application any amount in the subdivision accumulation fund that is credited to the subdivision.

(b) If a participating subdivision does not exist as a separate entity because it has merged or consolidated with a city or other agency that is not eligible to participate in the retirement system and if under the applicable law or merger agreement the successor is entitled to the assets of the subdivision, the retirement system, on application, shall pay to the successor the amount in the subdivision accumulation fund that is credited to the subdivision.

Sec. 845.318 [55.317]. CONSOLIDATION OF COUNTY'S ACCOUNTS IN SUBDIVISION ACCUMULATION FUND. (a) If a county that has provided for participation of county hospital employees separately from other county employees stops operating a county hospital, the commissioners court of the county, by order, may direct the retirement system to consolidate the separate accounts of the county in the subdivision accumulation fund.

(b) The retirement system shall consolidate the accounts and after consolidation shall charge each obligation of the county arising under this subtitle because of service performed by employees of the county against the consolidated account.

[Sections 845.319–845.400 [55.318–55.400] reserved for expansion]

#### SUBCHAPTER E. COLLECTION OF MEMBERSHIP FEES AND CONTRIBUTIONS

Sec. 845.401 [55.401]. COLLECTION OF MEMBERSHIP FEES. (a) Each member, with the member's contribution to the retirement system, shall pay an additional amount as a membership fee.

(b) The board of trustees shall set the rate of the membership fee not to exceed 50 cents a month and shall certify the amount to each participating subdivision.

(c) The board of trustees shall deposit the membership fees in the expense fund and shall use the fees for expenses of the retirement system.

Sec. 845.402 [55.402]. MEMBER CONTRIBUTIONS. (a) Each participating subdivision, by order or resolution of its governing body, shall designate the rate of member contributions for its employees. The subdivision may elect a rate of four, five, six, or seven percent of the current service compensation of its employees.

(b) The governing body of a participating subdivision may increase the rate of its member contributions after the first anniversary of the effective date of the existing rate.

(c) The governing body of a participating subdivision may reduce the rate of its member contributions only after the fifth anniversary of the effective date of the existing rate and only if the board of trustees determines that, according to the computations of the actuary approved by the board of trustees, the reduction would not impair the ability of the subdivision to fund all obligations against its account in the subdivision accumulation fund before the later of:

(1) the 30th anniversary of its effective date of participation; or

(2) the 30th anniversary of the date of the valuation that is the basis for the subdivision's latest increase in benefits or coverage in accordance with Section 844.201 or 844.207 [54.201 or Section 54.207 of this subtitle].

(d) A reduction in a deposit rate may become effective only on an anniversary of the participation date of the subdivision. The subdivision shall give written notice of a reduction in the deposit rate to the board of trustees not later than the 90th day before the effective date of the reduction.

(e) The governing body of a subdivision that has an effective date of participation before January 1, 1978, by order or resolution certified to the board of trustees, may exclude from the computation of an employee's contribution the amount of the employee's compensation that exceeds \$3,600 a year or a greater multiple of \$1,200 a year. A participating subdivision's governing body, by order or resolution certified to the board of trustees, may increase the amount of compensation on which contributions are paid.

(f) A participating subdivision may not require a member to pay a monthly contribution that exceeds an amount computed on the basis of one-twelfth of the annual compensation to be considered for payment of contributions as specified by the order or resolution described by Subsection (e) ~~[of this section]~~.

Sec. ~~845.403~~ [55.403]. COLLECTION OF MEMBER CONTRIBUTIONS. (a) Each payroll period after the effective date of a subdivision's participation, the subdivision shall cause the contribution for that period to be deducted from the compensation of each member that it employs.

(b) In determining the amount of a member's compensation for a payroll period, the board of trustees may use the rate of annual compensation payable to a member on the first day of the payroll period as the rate for the entire period and may omit deductions from compensation for less than a full payroll period if the employee was not a member on the first day of the period.

(c) To facilitate the making of deductions, the board of trustees may modify a member's required deductions by an amount that does not exceed 25 cents.

(d) A participating subdivision shall certify to the board of trustees on each payroll, or in another manner prescribed by the board, the amount to be deducted from the compensation of each member that it employs.

(e) The treasurer or disbursing officer of each participating subdivision shall:

(1) make deductions from each member's compensation for contributions to the retirement system;

(2) transmit monthly, or at the time designated by the board of trustees, the payroll and other pertinent information prescribed by the board; and

(3) pay the deductions to the board of trustees at the board's home office.

(f) After the deductions for member contributions are paid, the board of trustees shall:

(1) record all receipts; and

(2) deposit the receipts to the credit of the employees saving fund.

(g) The treasurer or disbursing officer of a participating subdivision shall make the deductions required by this section even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(h) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payroll period.

(i) Each participating subdivision shall pick up the employee contributions required of each member by Section ~~845.402~~ [55.402] and this section for all compensation earned after December 31, 1985, and shall pay these picked-up employee contributions from the same source of funds ~~[which is]~~ used in paying earnings to the employee. The participating subdivision may pick up these contributions by a reduction in the cash salary of the employee or by an offset against a future salary increase or by a combination of a reduction in salary and offset against a future salary increase; unless it is otherwise determined by the governing body of the participating subdivision, the pick-up shall be accomplished by a corresponding reduction in the cash salary of the employee.



(j) Contributions picked up as ~~[herein]~~ provided by Subsection (i) shall be treated as employer contributions in determining tax treatment of the amounts under the United States Internal Revenue Code; however, each participating subdivision shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service determines or the federal courts rule that pursuant to ~~[26 U.S.C.A. 414(h), United States]~~ Section 414(h) of the Internal Revenue Code of 1986 (26 U.S.C. Section 414), these picked-up contributions are ~~[shall]~~ not ~~[be]~~ included as gross income of the employee until such time as they are distributed or made available. Each employee contribution that is picked up as above provided shall be deposited as provided in Section 845.306 ~~[55.306]~~ to the individual account of the member, on whose behalf they are made, and shall ~~[thereupon]~~ be treated for all other purposes of this subtitle in the same manner and with like effect as if the amount had been deducted from the compensation of and made by the employee pursuant to ~~[the provisions of]~~ Sections 845.402 ~~[55.402]~~ and 845.403(a) ~~[55.403(a)]~~ through ~~[55.403](h)~~.

Sec. 845.404 ~~[55.404]~~. COLLECTION OF SUBDIVISION CONTRIBUTIONS. (a) Before the 16th day of each month, each participating subdivision shall pay or cause to be paid to the retirement system at the system's office:

(1) the member contributions, or "picked-up" member contributions, provided for by Sections 845.402 ~~[55.402]~~ and 845.403 ~~[55.403, above]~~, which shall be deposited to the individual accounts of the members; and

(2) an additional amount equal to the total of contributions made by or on behalf of employees of the subdivision under the provisions of Sections 845.402 ~~[55.402]~~ and 845.403 ~~[55.403]~~ for the preceding month, which additional amount shall be deposited to the account of the subdivision in the *subdivision accumulation fund* ~~[Subdivision Accumulation Fund]~~.

(b) Unless otherwise provided for and paid by a subdivision, a subdivision shall pay its contributions to the retirement system from:

- (1) the fund from which compensation is paid to members; or
- (2) the general fund of the subdivision.

Sec. 845.405 ~~[55.405]~~. WAR PERIOD CONTRIBUTIONS. (a) A member to whom this section applies may pay to the retirement system, during each 12 months of the period described by Subsection (b) ~~[of this section]~~, an amount that does not exceed the amount of the member's contribution to the system during the most recent 12-month period in which the member was employed by a participating subdivision.

(b) This section applies to a member who, as a result of conscription or volunteering, is serving in the United States armed forces, armed forces reserve, an auxiliary of the armed forces or reserves, or the American Red Cross or who as a result of government conscription is in war work, during a declared or undeclared war involving the United States, during a conflict between the armed forces of the United States and the armed forces of a foreign country, or before the first anniversary of the last day of the war or conflict.

(c) The board of trustees shall treat the amounts paid to the system under this section in the same manner as funds deposited by the member while an employee of a participating subdivision.

(d) The participating subdivision that most recently employed a member paying contributions under this section shall pay an amount equal to the amount paid by the member under this section.

Sec. 845.406 ~~[55.406]~~. SUPPLEMENTAL DEATH BENEFITS PROGRAM. (a) In addition to other contributions to the retirement system required by this subtitle, each subdivision participating in the supplemental death benefits fund monthly shall pay to the fund an amount equal to the rate of contribution computed in accordance with this section, multiplied by the total compensation for the month of the members employed by the subdivision.

(b) A limitation on subdivision contribution rates provided by this subtitle does not apply to the rate of the contribution to the supplemental death benefits fund.

(c) As soon as practical after the supplemental death benefits program is established and at the time of each investigation of members' mortality and service experience required by Section 845.110 ~~[55.110 of this subtitle]~~, the actuary shall investigate the mortality experience of the members and eligible annuitants participating in the supplemental death benefits program. On the basis of the result of that investigation, the actuary shall recommend to the board of trustees rates and tables necessary to determine supplemental death benefits contribution rates. The rates and tables may provide for the anticipated mortality experience of the persons covered under the supplemental death benefits fund and for a contingency reserve.

(d) Before a subdivision's participation date in the supplemental death benefits fund and before January 1 of each subsequent year, the actuary shall compute, on the basis of rates and tables adopted by the board of trustees, the supplemental death benefits contribution rate of a subdivision participating in the supplemental death benefits contribution fund. The rate must be expressed as a percentage of the compensation of members employed by the subdivision. When the rate is approved by the board of trustees, the rate is effective for the calendar year for which it was approved.

(e) If the balance in the supplemental death benefits fund is insufficient to pay the supplemental death benefits due, the board of trustees may direct that, to the extent available, an amount equal to the amount of the deficiency be transferred from the general reserves account of the endowment fund to the supplemental death benefits fund. The board may adjust future contributions to the supplemental death benefits fund to repay to the general reserves account the transferred amount.

(f) If the total number of members covered by the supplemental death benefits fund becomes fewer than 4,000, the board of trustees may order that the fund be discontinued and all coverage terminated. The termination date must be December 31 of a year designated by the board and may not be before the expiration of six months after the date on which the order of termination was adopted.

(g) To protect against adverse claim experience, the board of trustees may secure reinsurance from one or more stock insurance companies doing business in this state if the board determines that reinsurance is necessary. The retirement system shall pay the premiums for reinsurance from the supplemental death benefits fund.

[Sections 845.407–845.500 ~~[55.407–55.500]~~ reserved for expansion]

#### SUBCHAPTER F. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

Sec. 845.501 ~~[55.501]~~. STATEMENT OF AMOUNT IN ACCOUNT. (a) As soon as possible after the end of each calendar year, the board of trustees shall send to the governing body of each subdivision and to each requesting member an annual statement that contains:

- (1) a balance sheet showing the financial and actuarial condition of the retirement system at the end of the calendar year;
- (2) a statement showing the receipts and disbursements made during the calendar year;
- (3) a statement showing changes in the asset, liability, reserve, and surplus accounts during the calendar year; and
- (4) additional statistics necessary for proper interpretation of the condition of the retirement system.

(b) The board of trustees shall furnish to a member, on written request, a statement of the amount credited to the member's individual account. During a calendar year, the board is not required to furnish to a member more than one statement requested under this subsection.

Sec. 845.502 ~~[55.502]~~. INTEREST IN ASSETS. A particular person or subdivision has no right in a specific security or in an item of cash other than an undivided interest in the assets of the retirement system.

Sec. ~~845.503~~ [55.503]. FORFEITURE OF CONTRIBUTIONS. (a) If an application for the accumulated contributions of a member under Section ~~842.108~~ [52.108 of this subtitle] has not been made before the seventh anniversary of the member's last day of service, the retirement system shall return to the contributor or the contributor's estate all of the person's accumulated contributions.

(b) If the contributor or the administrator of the contributor's estate cannot be found, the person's accumulated contributions are forfeited to the retirement system. The retirement system shall credit the amount forfeited to the perpetual endowment account of the endowment fund.

*[Chapters 846–850 reserved for expansion]*

#### SUBTITLE G. TEXAS MUNICIPAL RETIREMENT SYSTEM

##### CHAPTER 851 [61]. GENERAL PROVISIONS

##### SUBCHAPTER A. GENERAL PROVISIONS

###### Sec. 851.001 [61.001]. DEFINITIONS

###### Sec. 851.002 [61.002]. PURPOSE OF SUBTITLE

###### Sec. 851.003 [61.003]. RETIREMENT SYSTEM

###### Sec. 851.004 [61.004]. POWERS AND PRIVILEGES

###### Sec. 851.005 [61.005]. ACTION FOR ACCOUNTING

###### Sec. 851.006 [61.006]. EXEMPTION FROM EXECUTION

*[Sections 851.007–851.100 [61.007–61.100] reserved for expansion]*

##### SUBCHAPTER B. PENAL PROVISIONS

###### Sec. 851.101 [61.101]. OFFENSES; PENALTY

#### SUBTITLE G. TEXAS MUNICIPAL RETIREMENT SYSTEM

##### CHAPTER 851 [61]. GENERAL PROVISIONS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 851.001 [61.001]. DEFINITIONS. In this subtitle:

(1) "Accumulated contributions" means the sum of all contributions made by a member and credited to the member's individual account in the employees saving fund, plus interest allowed on the account as provided by this subtitle.

(2) "Actuarial equivalent" means a benefit that, at the time it is entered upon, has the same present value as the benefit it replaces, based on interest and on a mortality table recommended by the actuary and adopted by the board of trustees.

(3) "Annuity" means an amount of money payable in equal monthly installments at the end of each month for a period determined under this subtitle.

(4) "Annuity reserve" means the present value, computed on the basis of annuity or mortality tables adopted by the board of trustees, with interest, of all payments to be made under an annuity.

(5) "Board of trustees" means the persons appointed under this subtitle to administer the retirement system.

(6) "Compensation" means the sum of payments made to an employee for performance of personal services, as certified on a written payroll of an employing department, that does not exceed any rate of compensation fixed by a governing body as the maximum salary on which member contributions to the retirement system may be based, and includes amounts by which payment for earnings is reduced by reason of:

(A) employer pick-up of employee contributions to the retirement system under Section ~~855.402(j)~~ ~~[65.402(j) of this subtitle]~~;

(B) deferral of compensation under benefit plans adopted by the employer pursuant to Section 401(k) or [Section] 457 of the [United States] Internal Revenue Code of 1986 (26 U.S.C. Sections 401 [401(k)], 457);

(C) cost of benefits furnished under qualified cafeteria plans adopted by the employer pursuant to Section 125 of the [United States] Internal Revenue Code of 1986 (26 U.S.C. Section 125);

(D) cost of tax-sheltered annuities acquired for the employee under Section 403(b) of the [United States] Internal Revenue Code of 1986 (26 U.S.C. Section ~~403~~ [403(b)]); and

(E) deductions for Federal Insurance Contributions Act taxes, federal income taxes, or other obligations of the employee.

(7) "Department" means a recognized division performing a governmental or proprietary function of a municipality.

(8) "Employee" means a person who receives compensation from and is certified by a municipality as being regularly engaged in the performance of duties of:

(A) an appointive office or position that normally requires services from the person for not less than 1,000 hours a year; or

(B) an elective office that normally requires services from the person for not less than 1,000 hours a year, in a municipality that began participating in the retirement system after December 31, 1981, or that has adopted a membership requirement under Section ~~852.107~~ ~~[62.107 of this subtitle]~~.

(9) "Municipality" means any incorporated city or town in this state.

(10) "Rate of compensation" means the rate at which payments to an employee are computed, as certified by the employing municipality, converted into compensation for any period on the assumption that 2,400 hours, 300 days, 52 weeks, 12 months, and 1 year are equivalents.

(11) "Retirement" means withdrawal from service with a retirement benefit granted under this subtitle.

(12) "Retirement system" means the Texas Municipal Retirement System.

(13) "Service" means the time a person is an employee.

(14) "Credited service" means the number of months of prior and current service ascribed to a member in the retirement system or included in a prior service certificate in effect for the member.

(15) "Amortization period" means, as to a particular municipality, the time ending with the latest of:

(A) the expiration of 25 years *after* ~~[from]~~ the effective date of the municipality's participation in the retirement system, *after* ~~[from]~~ the effective date of the most recent annuity increases allowed by the municipality under Section ~~854.203~~ ~~[64.203 of this subtitle]~~, or *after* ~~[from]~~ the effective date of the most recent updated service credits allowed by the municipality under Section ~~853.401~~ ~~[63.401 of this subtitle]~~; or

(B) the expiration of 20 years *after* ~~[from]~~ the date the municipality allowed any special prior service credits or antecedent service credits.

Sec. ~~851.002~~ ~~[61.002]~~. PURPOSE OF SUBTITLE. The purpose of this subtitle is to establish a program of benefits for members, retirees, and their beneficiaries and to establish rules for the management and operation of the retirement system.

Sec. ~~851.003~~ ~~[61.003]~~. RETIREMENT SYSTEM. The Texas Municipal Retirement System is continued in existence and is the name by which the business of the retirement system shall be transacted, all its funds invested, and all its cash and other property held.

Sec. ~~851.004~~ ~~[61.004]~~. POWERS AND PRIVILEGES. The retirement system has the powers, privileges, and immunities of a corporation, as well as the powers, privileges, and immunities conferred by this subtitle.

Sec. 851.005 [61.005]. ACTION FOR ACCOUNTING. (a) The retirement system or the board of trustees may initiate, or cause to be initiated on its behalf, an action against a participating municipality, a board of the municipality, or individual officers of the municipality, to compel an accounting of sums due to the retirement system or to require the withholding and accounting of sums due from members.

(b) The venue of an action brought under this section is in either Travis County or a county in which the municipality is situated.

Sec. 851.006 [61.006]. EXEMPTION FROM EXECUTION. All retirement annuity payments, other benefit payments, and a member's accumulated contributions are unassignable and are exempt from execution, garnishment, attachment, and state and local taxation.

[Sections 851.007–851.100 [61.007–61.100] reserved for expansion]

#### SUBCHAPTER B. PENAL PROVISIONS

Sec. 851.101 [61.101]. OFFENSES; PENALTY. (a) A person commits an offense if the person knowingly makes a false statement in a report or application to the retirement system in an attempt to defraud the retirement system.

(b) A person commits an offense if the person knowingly makes a false certificate of an official report to the retirement system.

(c) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$1,000, confinement in jail for not less than 30 days nor more than one year, or both.

CHAPTER 852 [62]. MEMBERSHIP

SUBCHAPTER A. MUNICIPAL PARTICIPATION

Sec. 852.001 [62.001]. ELECTION TO PARTICIPATE

Sec. 852.002 [62.002]. REFERENDUM ON PARTICIPATION

Sec. 852.003 [62.003]. SUPPLEMENTAL DISABILITY BENEFITS FUND

Sec. 852.004 [62.004]. SUPPLEMENTAL DEATH BENEFITS FUND

Sec. 852.005 [62.005]. STATUS AS A MUNICIPALITY

Sec. 852.006 [62.006]. TERMINATION OF PARTICIPATION

[Sections 852.007–852.100 [62.007–62.100] reserved for expansion]

SUBCHAPTER B. MEMBERSHIP

Sec. 852.101 [62.101]. GENERAL MEMBERSHIP REQUIREMENT

Sec. 852.102 [62.102]. EXCEPTION TO GENERAL MEMBERSHIP REQUIREMENT

Sec. 852.103 [62.103]. WITHDRAWAL OF CONTRIBUTIONS

Sec. 852.104 [62.104]. TERMINATION OF MEMBERSHIP

Sec. 852.105 [62.105]. OPTIONAL PRIOR SERVICE CREDITS

Sec. 852.106 [62.106]. INELIGIBILITY FOR MEMBERSHIP; MULTIPLE  
RETIREMENT SYSTEM MEMBERSHIP

Sec. 852.107 [62.107]. OPTIONAL MEMBERSHIP REQUIREMENT  
FOR ELECTED OFFICERS

Sec. 852.108 [62.108]. RESUMPTION OF SERVICE BY RETIREE

CHAPTER 852 [62]. MEMBERSHIP

SUBCHAPTER A. MUNICIPAL PARTICIPATION

Sec. 852.001 [62.001]. ELECTION TO PARTICIPATE. (a) By vote of its governing body in the manner required for other official actions, a municipality may elect to have one or more of its departments participate in the retirement system and be subject to the provisions of this subtitle.

(b) The governing body of a municipality shall notify the board of trustees of an election under this section and shall identify the participating departments before the 11th day after the date of election.

(c) A department begins participation in the retirement system on the first day of the second month after the month the board of trustees receives notice of an election to participate.

Sec. 852.002 [62.002]. REFERENDUM ON PARTICIPATION. (a) If qualified voters representing at least 10 percent of the total votes cast at the most recent regular municipal election petition the governing body of a municipality for an election on the issue of participation in the retirement system by the municipality or specified departments of the municipality, the governing body shall make arrangements for an election to be held before the 61st day after the day the petition is filed.

(b) If a majority of the votes cast in an election under this section favor municipal or departmental participation in the retirement system, the governing body of the municipality immediately shall elect to participate.

Sec. 852.003 [62.003]. SUPPLEMENTAL DISABILITY BENEFITS FUND. (a) A municipality may not elect to participate in the supplemental disability benefits fund after August 31, 1987 [the effective date of the 1987 amendment of this section].

(b) Each municipality that elected to participate in the supplemental disability benefits fund before *September 1, 1987* [~~the effective date of the 1987 amendment of this section~~] ceases participation in that fund at midnight on December 31, 1987, and its employees shall cease to be covered for supplemental disability benefits as to any injuries subsequently sustained. Each municipality participating in the supplemental disability fund on December 31, 1987, is entitled to participate in any distributions and transfers authorized by the board of trustees pursuant to Section *855.319* [~~65.319 of this subtitle~~].

Sec. *852.004* [~~62.004~~]. SUPPLEMENTAL DEATH BENEFITS FUND. (a) If a municipality has one or more departments participating in the retirement system on a full-salary basis, the municipality may elect to participate in the supplemental death benefits fund.

(b) A municipality that elects to participate in the fund may elect coverage providing postretirement death benefits in addition to coverage providing in-service death benefits.

(c) Before a municipality that has fewer than 10 employees who are members of the retirement system is permitted to participate in the fund, the board of trustees may require the municipality to provide evidence that is satisfactory to the board that the members are in good health.

(d) A municipality that elects to participate in the fund after the operative date of the fund may begin participation on the first day of any month after the month in which the municipality gives notice of its election to the board of trustees.

(e) If a municipality has previously discontinued participation in the fund, the board of trustees in its discretion may restrict the right of the municipality to participate again.

Sec. *852.005* [~~62.005~~]. STATUS AS A MUNICIPALITY. (a) For the purposes of this subtitle, the Texas Municipal Retirement System and, as limited by Subsection (b) [~~of this section~~], the Texas Municipal League, have the standing of municipalities.

(b) The Texas Municipal League has the standing conferred by this section except as to a person who is employed by the league for the first time and who is engaged in lobbying activities.

Sec. *852.006* [~~62.006~~]. TERMINATION OF PARTICIPATION. (a) Except as provided by [~~in~~] this section, a municipality may not terminate participation in the retirement system or in the supplemental disability benefits fund if the municipality has employees who are members of the system or who participate in the fund, but the municipality may elect to discontinue the participation in the system or the fund of persons employed or reemployed after the date of an election to discontinue.

(b) If before November 1 of any year a municipality gives written notice of its intention to the retirement system, the municipality may terminate coverage under, and discontinue participation in, the supplemental death benefits fund. A termination under this subsection is effective on January 1 of the year following the year in which notice is given.

(c) If a municipality participating in the retirement system has no employees who are members of the system and has no present or potential liabilities as a result of the participation of former employees, the municipality, on receiving a refund under Section *855.319* [~~65.319 of this subtitle~~], ceases participation in the system.

[Sections *852.007–852.100* [~~62.007–62.100~~] reserved for expansion]

#### SUBCHAPTER B. MEMBERSHIP

Sec. *852.101* [~~62.101~~]. GENERAL MEMBERSHIP REQUIREMENT. (a) Except as otherwise provided by this subchapter, a person who is not a member becomes a member of the retirement system if:

(1) on the date a municipal department's participation in the retirement system becomes effective, the person is an employee of the department;

(2) after August 31, 1987, the person becomes an employee of a participating department; or

(3) the person on August 31, 1987, is an employee of a participating department but is not a member because at the time of employment the person's age exceeded the maximum age for becoming a member.

(b) Any person to whom Subsection (a)(1) ~~[of this section]~~ applies becomes a member of the retirement system on the date the department's participation becomes effective, and any person to whom Subsection (a)(2) ~~[of this section]~~ applies becomes a member of the retirement system on the date the person is employed. A person to whom Subsection (a)(3) ~~[of this section]~~ applies becomes a member of the retirement system on September 1, 1987.

Sec. 852.102 ~~[62.102]~~. EXCEPTION TO GENERAL MEMBERSHIP REQUIREMENT. (a) If on the effective date of participation of the employing department, a person had with a municipality an employment contract that is violated by the membership requirement of Section 852.101(a)(1) ~~[62.101(a)(1) of this subtitle]~~, the person is not required, but may elect, to become a member of the retirement system.

(b) If a person who is qualified to make an election under this section has been notified that the municipality has elected to participate in the retirement system, or if the person makes contributions to the retirement system, the person is considered to have elected membership in the retirement system unless before the date the municipality's participation becomes effective the person files with the board of trustees written notice of an election not to become a member.

(c) A person who elects under this section not to become a member may never become a member of the retirement system.

Sec. 852.103 ~~[62.103]~~. WITHDRAWAL OF CONTRIBUTIONS. A living person who is not an employee of a participating department and who has not retired may, after application, withdraw all of the accumulated contributions credited to the person's individual account in the employees saving fund, and the retirement system shall close the account.

Sec. 852.104 ~~[62.104]~~. TERMINATION OF MEMBERSHIP. (a) Except as otherwise provided by this section, a person terminates membership in the retirement system by:

- (1) death;
- (2) retirement;
- (3) withdrawal of all of the person's contributions while the person is absent from service; or
- (4) absence from service for more than 60 consecutive months.

(b) A member of the retirement system is not absent from service and continues to accumulate credited service if at any time during a state of war involving the United States, during a conflict between the armed forces of the United States and the armed forces of a foreign country, or before the first anniversary of the last day of the war or conflict, the person:

- (1) performs active duty service in the armed forces of the United States or their auxiliaries;
- (2) performs active duty service in the armed forces reserve of the United States or their auxiliaries;
- (3) performs service in the American Red Cross; or
- (4) is conscripted and performs war-related service.

(c) If a member of the retirement system is an employee of a participating department of a municipality that, as provided by this subtitle, allows a person to terminate employment and remain eligible for retirement after accumulating a specified amount of credited service, and if the person meets the requirement, the person may terminate employment and is not subject to loss of membership because of absence from service.

(d) Termination of membership in the retirement system terminates membership in the supplemental disability benefits fund.

Sec. 852.105 ~~[62.105]~~. OPTIONAL PRIOR SERVICE CREDITS. (a) The governing body of a municipality that has an effective date of participation in the retirement system



before September 1, 1987, and that allows service retirement of a member at age 60 or older with at least 10 years of credited service may by ordinance allow prior service credit for service performed for the municipality before September 1, 1987, by any person who at the time of performing the service was not a member because at the time of employment the person's age exceeded the maximum age for becoming a member.

(b) A governing body may not adopt an ordinance under this section unless the actuary first determines, on the basis of mortality and other tables adopted by the board of trustees, that all obligations of the municipality to the municipality accumulation fund, including obligations proposed under the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

Sec. 852.106 [62.106]. INELIGIBILITY FOR MEMBERSHIP; MULTIPLE RETIREMENT SYSTEM MEMBERSHIP. (a) Except as provided by this section:

(1) a person who is elected to public office is not an employee eligible for membership in the retirement system; and

(2) a person is not an employee eligible for membership and is not eligible to receive credited service in this retirement system for service performed that makes a person eligible for membership or is creditable in another pension fund or retirement system that is at least partly supported at public expense.

(b) A person may simultaneously receive credit or benefits for service performed during the same period in the retirement system and the federal program providing old age and survivors insurance.

(c) If a volunteer firefighter or an elected officer is employed by a participating municipality in another capacity that satisfies the definition of "employee" under this subtitle, the person may be a member of, and receive service credit in, the retirement system for service performed in the other capacity.

(d) If a person is elected to an office of a municipality that began participating in the retirement system after December 31, 1981, the person is required to become a member of the retirement system as of the date the person takes office or the effective date of participation, whichever is later. If a person is elected to an office of a municipality that has adopted an ordinance under Section 852.107 [62.107 of this subtitle], the person is required to become a member of the retirement system as of the date the person takes office or the effective date of the ordinance, whichever is later.

Sec. 852.107 [62.107]. OPTIONAL MEMBERSHIP REQUIREMENT FOR ELECTED OFFICERS. (a) The governing body of a municipality that began participation in the retirement system before January 1, 1982, by ordinance may provide that persons who hold and are regularly engaged in the performance of duties of an elective office that normally requires actual performance of services in a participating department of the municipality for not less than 1,000 hours a year are employees required to become members of the retirement system.

(b) An ordinance under this section takes effect on the first day of any calendar month after adoption that is designated by the governing body adopting the ordinance.

(c) A person required to become a member under an ordinance adopted under this section becomes a member on the effective date of the ordinance or the date the person takes office, whichever is later, unless the date the person takes office is after the effective date of the ordinance and the person is then ineligible for membership under applicable age restrictions of this subtitle.

(d) A person who becomes a member as provided by this section is entitled to prior service credit as provided by Section 852.302 [62.302 of this subtitle].

Sec. 852.108 [62.108]. RESUMPTION OF SERVICE BY RETIREE. (a) Except as provided by this section, a retiree is not entitled to be paid a service retirement benefit for any month in which the retiree is regularly employed by any participating municipality. If a retiree is paid a retirement benefit for any month during which the retiree is ineligible as provided by this section, the benefit otherwise payable to the retiree for subsequent months shall be suspended for an equivalent period. Loss of benefits

pursuant to this section does not extend any period of guaranteed benefits elected pursuant to any provision of this subtitle.

(b) For purposes of this section, a retiree is not considered regularly employed by a participating municipality if the retiree is employed for 700 hours or less during any calendar year.

(c) Each participating municipality that employs a retiree shall report the fact and terms of employment and payment of the retiree on a form prescribed by the board.

(d) A person who has retired under this subtitle because of service may not rejoin the retirement system.

CHAPTER 853 [63]. CREDITABLE SERVICE

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 853.001 [63.001]. TYPES OF CREDITABLE SERVICE

Sec. 853.002 [63.002]. BENEFIT ELIGIBILITY BASED ON CREDITED SERVICE

Sec. 853.003 [63.003]. CREDITED SERVICE PREVIOUSLY CANCELED

[Sections 853.004–853.100 [63.004–63.100] reserved for expansion]

SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE

Sec. 853.101 [63.101]. CREDITABLE PRIOR SERVICE

Sec. 853.102 [63.102]. ELIGIBILITY FOR PRIOR SERVICE

Sec. 853.103 [63.103]. STATEMENT OF PRIOR SERVICE

Sec. 853.104 [63.104]. CERTIFICATION OF SERVICE AND  
AVERAGE COMPENSATION

Sec. 853.105 [63.105]. DETERMINATION OF PRIOR SERVICE CREDIT

Sec. 853.106 [63.106]. PRIOR SERVICE CERTIFICATE

Sec. 853.107 [63.107]. VOID PRIOR SERVICE CERTIFICATE

[Section 853.108–853.200 [63.108–63.200] reserved for expansion]

SUBCHAPTER C. ESTABLISHMENT OF CURRENT SERVICE

Sec. 853.201 [63.201]. CREDITABLE CURRENT SERVICE

[Sections 853.202–853.300 [63.202–63.300] reserved for expansion]

SUBCHAPTER D. OPTIONAL SERVICE

Sec. 853.301 [63.301]. SERVICE FOR CERTAIN PUBLIC FACILITIES

Sec. 853.302 [63.302]. SERVICE FOR ELECTED OFFICERS

[Sections 853.303–853.400 [63.303–63.400] reserved for expansion]

SUBCHAPTER E. OPTIONAL INCREASES IN SERVICE CREDITS

Sec. 853.401 [63.401]. ORDINANCE AUTHORIZING UPDATED SERVICE CREDITS

Sec. 853.402 [63.402]. DETERMINATION OF UPDATED SERVICE CREDITS

Sec. 853.403 [63.403]. APPROVAL OF ORDINANCE

[Sections 853.404–853.500 [63.404–63.500] reserved for expansion]

SUBCHAPTER F. OPTIONAL MILITARY SERVICE

Sec. 853.501 [63.501]. CREDITABLE MILITARY SERVICE

Sec. 853.502 [63.502]. ESTABLISHMENT OF MILITARY SERVICE CREDIT

Sec. 853.503 [63.503]. USE OF MILITARY SERVICE CREDIT

[Sections 853.504–853.600 [63.504–63.600] reserved for expansion]

SUBCHAPTER G. OPTIONAL UPDATED SERVICE CREDIT FOR  
TRANSFERRED SERVICE

Sec. 853.601 [63.601]. ORDINANCE AUTHORIZING UPDATED SERVICE CREDIT  
FOR TRANSFERRED SERVICE

## CHAPTER 853 [63]. CREDITABLE SERVICE

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 853.001 ~~[63.001]~~. TYPES OF CREDITABLE SERVICE. The types of service creditable as credited service in the retirement system are prior service and current service.

Sec. 853.002 ~~[63.002]~~. BENEFIT ELIGIBILITY BASED ON CREDITED SERVICE. A member's eligibility to receive a benefit is based on credited service at the time of retirement.

Sec. 853.003 ~~[63.003]~~. CREDITED SERVICE PREVIOUSLY CANCELED. (a) An eligible member who has withdrawn contributions and canceled credited service in the retirement system may reestablish the canceled credit in the system if the governing body of the municipality that currently employs the member by ordinance authorizes reestablishment of the credit by eligible employee members.

(b) A member eligible to reestablish credit under this section is one who has, since resuming membership, at least 24 consecutive months of credited service as an employee of the municipality for which the ordinance was adopted.

(c) A member may reestablish credit by depositing with the retirement system in a lump sum the amount withdrawn from the system, plus a withdrawal charge computed at an annual rate of five percent from the date of withdrawal to the date of redeposit.

(d) Credit reestablished under this section is treated as if all service on which the credit is based were performed for the municipality authorizing the reestablishment.

(e) A governing body may not adopt an ordinance under Subsection (a) ~~[of this section]~~ unless the actuary first determines that all obligations charged against the municipality's account in the municipality accumulation fund, including the obligations proposed in the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

[Sections 853.004–853.100 ~~[63.004–63.100]~~ reserved for expansion]

## SUBCHAPTER B. ESTABLISHMENT OF PRIOR SERVICE

Sec. 853.101 ~~[63.101]~~. CREDITABLE PRIOR SERVICE. Prior service creditable in the retirement system is:

(1) service performed as an employee of a participating department of a municipality before the date the department's participation in the retirement system became effective;

(2) for a person who becomes a member of the retirement system under Section 852.105 ~~[62.105 of this subtitle]~~, service performed as an employee of a participating department during a time the person was ineligible for membership because of age; or

(3) for a person entitled to prior service credit under Section 853.102(a)(3) ~~[63.102(a)(3) of this subtitle]~~, service for which current service credit has not been granted that was performed as an employee of a participating department during a time the person was ineligible to participate because of age.

Sec. 853.102 ~~[63.102]~~. ELIGIBILITY FOR PRIOR SERVICE. (a) A member is eligible to receive credit in the retirement system for prior service if the member:

(1) became a member as an employee of a department of a municipality on the effective date of the department's participation in the retirement system;

(2) became a member as an employee of a department of a municipality before the fifth anniversary of the effective date of the department's participation and continued as an employee of a participating department of the municipality for at least five consecutive years after reemployment; or

(3) became a member September 1, 1987, by virtue of Sections *852.101(a)(3) and (b) [62.101(a)(3) and (b) of this subtitle]* and has service before that date with a municipality that has adopted the provisions of Section *852.105 [62.105]*.

(b) The board of trustees may adopt rules concerning eligibility for prior service under this section.

Sec. *852.103 [63.103]*. STATEMENT OF PRIOR SERVICE. A member may claim credit for prior service by filing a detailed statement of the service with the city clerk or city secretary of the municipality for which the service was performed.

Sec. *852.104 [63.104]*. CERTIFICATION OF SERVICE AND AVERAGE COMPENSATION. (a) As soon as practicable after a member files a statement of prior service under Section *852.103 [63.103 of this subtitle]*, the municipality that employs the person who receives the statement shall verify the prior service claimed and certify to the board of trustees the amount of service approved and the member's average prior service compensation.

(b) The average prior service compensation of a member is computed as the average monthly compensation for service performed for a participating department of the municipality:

(1) for the 36 months immediately preceding the effective date of the department's participation in the retirement system; or

(2) if the member did not perform service in each of the 36 months immediately preceding participation, for the number of months of service within the 36-month period.

(c) The board of trustees may adopt rules concerning verification and certification of service and compensation under this section.

Sec. *852.105 [63.105]*. DETERMINATION OF PRIOR SERVICE CREDIT. (a) After receiving a certification of prior service and average prior service compensation under Section *852.104 [63.104 of this subtitle]*, the board of trustees shall determine the member's prior service credit.

(b) For an employee of a municipality having an effective date of participation in the retirement system before January 1, 1976, the prior service credit is an amount equal to the accumulation at interest of a series of equal monthly amounts for the number of months of approved prior service. Each monthly amount equals 10 percent of the member's average prior service compensation, or \$300 a month, whichever is less. Interest is allowed at the end of each 12-month period on an accumulated amount at the beginning of each period and is credited only for each whole 12-month period.

(c) For an employee of a municipality having an effective date of participation in the retirement system after December 31, 1975, the prior service credit is an amount computed as a percentage determined as provided by Subsection (d) [*of this section*], times a base credit equal to the accumulation at three percent interest of a series of monthly amounts for the number of months of approved prior service, times the sum of:

(1) the rate of contributions required of employees of the municipality for current service; plus

(2) the rate described in Subdivision (1) [*of this subsection*] times the municipal current service matching ratio.

(d) The governing body of a municipality having an effective date of retirement system participation after December 31, 1975, shall determine in the ordinance providing for participation the percentage to be applied against the base credit in computing a prior service credit under Subsection (c) [*of this section*]. The percentage adopted may be any multiple of 10 percent that does not exceed 100 percent of the base credit. A governing body may not adopt a percentage under this subsection until the actuary first determines, and the board of trustees concurs in the determination, that the municipality is able to fund, before the 25th anniversary of the effective date of its participation in the retirement system, all prior service obligations that the municipality proposes to assume under this section.

(e) The prior service credit of a person who becomes a member of the retirement system under Section 852.105 ~~[62.105 of this subtitle]~~ or who is entitled to prior service credit under Section 853.102(a)(3) ~~[63.102(a)(3) of this subtitle]~~ is computed on the percentage of the base prior service credit that was most recently used by the person's employing municipality in computing prior or updated service credits for current employees.

(f) Interest on a prior service credit is earned for each whole year beginning on the effective date of membership and ending on the effective date of retirement.

Sec. 853.106 ~~[63.106]~~. PRIOR SERVICE CERTIFICATE. (a) After determining a member's prior service credit under Section 853.105 ~~[63.105 of this subtitle]~~, the board of trustees shall issue to the member a prior service certificate stating:

- (1) the number of months of prior service credited;
- (2) the average prior service compensation; and
- (3) the prior service credit.

(b) As long as a person remains a member, the person's prior service certificate is, for purposes of retirement, conclusive evidence of the information it contains, except that a member or participating municipality, before the first anniversary of its issuance or modification, may request the board of trustees to modify the certificate.

Sec. 853.107 ~~[63.107]~~. VOID PRIOR SERVICE CERTIFICATE. (a) When a person's membership in the retirement system is terminated, any prior service certificate issued to the person becomes void.

(b) A person whose membership has terminated and who subsequently resumes membership in the retirement system is not entitled to credit for prior service.

[Sections 853.108–853.200 ~~[63.108–63.200]~~ reserved for expansion]

#### SUBCHAPTER C. ESTABLISHMENT OF CURRENT SERVICE

Sec. 853.201 ~~[63.201]~~. CREDITABLE CURRENT SERVICE. Service performed as an employee member of a participating department of a municipality is credited in the retirement system for each month for which the required contributions are made by the member.

[Sections 853.202–853.300 ~~[63.202–63.300]~~ reserved for expansion]

#### SUBCHAPTER D. OPTIONAL SERVICE

Sec. 853.301 ~~[63.301]~~. SERVICE FOR CERTAIN PUBLIC FACILITIES. (a) The governing body of a participating municipality by ordinance may authorize the granting of prior service credit in the retirement system for service performed in a public hospital, utility, or other public facility currently operated by the municipality, during a time the facility was operated by a unit of government other than the municipality and before:

- (1) the effective date of the municipality's participation in the retirement system, if the facility was acquired by the municipality before that date; or
- (2) the date of acquisition of the facility, if the facility was acquired after the effective date of the municipality's participation in the retirement system.

(b) A member eligible to receive credit under this section after an ordinance is adopted under Subsection (a) ~~[of this section]~~ is one who was employed by the municipality at a public facility:

- (1) on the effective date of the municipality's participation, for service under Subsection (a)(1) ~~[of this section]~~; or
- (2) on the date of acquisition of the facility, for service under Subsection (a)(2) ~~[of this section]~~.

(c) All credit authorized by a municipality under this section is treated as if it were performed for the municipality.

Sec. 853.302 [63.302]. SERVICE FOR ELECTED OFFICERS. An elected officer who becomes a member of the retirement system on the effective date of an ordinance adopted under Section 852.107 [62.107 of this subtitle] is entitled to prior service credit computed as provided by Section 853.105 [63.105 of this subtitle], except that if the employing municipality has granted updated service credits, the percentage to be used in computing a prior service credit under this section is the percentage of the base updated service credit that was most recently used by the municipality in computing updated service credits.

[Sections 853.303–853.400 [63.303–63.400] reserved for expansion]

#### SUBCHAPTER E. OPTIONAL INCREASES IN SERVICE CREDITS

Sec. 853.401 [63.401]. ORDINANCE AUTHORIZING UPDATED SERVICE CREDITS. (a) Except as provided by Subsection (b) [of this section], the governing body of a participating municipality by ordinance may authorize the crediting in the retirement system of updated service credits for service performed for the municipality by members. An updated service credit authorized under this section replaces any updated service credit, prior service credit, special prior service credit, or antecedent service credit previously authorized for part of the same service.

(b) A municipality may not authorize updated service credits for members who had less than 36 months of credited service on the date prescribed by Section 853.402(e) [63.402(e) of this subtitle].

(c) In adopting an ordinance under this section, a governing body shall specify the percentage of base updated service credits to be used in computing updated service credits for employees of the municipality and shall specify the date the updated service credits will take effect. The percentage adopted may be any multiple of 10 percent that does not exceed 100 percent of a base updated service credit. The effective date must be January 1 of a year specified by the governing body.

(d) An ordinance under this section also must require, beginning on the effective date of the updated service credits, that a member's monthly contributions for current service be based on the member's total monthly compensation from the municipality, if the requirement is not already in effect for employees of the municipality.

(e) A governing body that adopts an ordinance under this section shall send it to the retirement system, and the system must receive it before the effective date of the updated service credits authorized in the ordinance.

Sec. 853.402 [63.402]. DETERMINATION OF UPDATED SERVICE CREDITS. (a) If a governing body sends the retirement system an ordinance adopted under Section 853.401 [63.401 of this subtitle], the retirement system shall determine for each affected member the average updated service compensation, base updated service credit, and updated service credit.

(b) The average updated service compensation of a member is computed as the monthly average compensation for:

(1) the 36 months immediately preceding the date prescribed by Subsection (e) [of this section];

(2) if the member did not perform service in each of the 36 months described in Subdivision (1) [of this subsection], for the number of months of service within the 36-month period; or

(3) if the member did not perform any service within the 36-month period, for the number of months of service within the 36-month period ending with the last month of the calendar year in which the member's most recent service was performed.

(c) The base updated service credit of a member is an amount computed as the number 1.03, times the difference by which the amount computed under Subdivision (1) ~~[of this subsection]~~ exceeds the amount computed under Subdivision (2), where:

(1) "(1)" is an amount equal to the accumulation at three percent interest of a series of monthly amounts for the number of months of credited service on the date prescribed by Subsection (e) ~~[of this section]~~, each amount of which equals the member's average updated service compensation, times the sum of:

(A) the rate of contributions required of the member for current service; plus

(B) the member's contribution rate, times the municipal current service ratio in effect on the effective date of the ordinance adopted under Section 853.401 ~~[63.401 of this subtitle]~~; and where

(2) "(2)" is an amount equal to the sum of:

(A) the amount credited to the member's individual account in the employees saving fund on the date prescribed by Subsection (e) ~~[of this section]~~, subject to a 1 to 1 matching ratio, times 2; plus

(B) the amount credited to the member's individual account, subject to a 1.5 to 1 matching ratio, times 2.5; plus

(C) the amount credited to the member's individual account, subject to a 2 to 1 matching ratio, times 3.

(d) The updated service credit of a member is an amount equal to the greatest of the following:

(1) the percentage determined under Section 853.401(c) ~~[63.401(e) of this subtitle]~~, times the member's base updated service credit; or

(2) any updated service credit previously authorized by the municipality and in effect for the member, accumulated at interest as provided by Subsection (f) ~~[of this section]~~ from the date it took effect to the date prescribed by Subsection (e) ~~[of this section]~~; or

(3) the sum of any prior service credit, special prior service credit, and antecedent service credit previously authorized by the municipality and in effect for the member, accumulated at interest as provided by Subsection (f) ~~[of this section]~~ from the dates the credits took effect to the date prescribed by Subsection (e) ~~[of this section]~~.

(e) The date used in computing updated service compensation and updated service credits under this section is January 1 of the year immediately preceding the January 1 on which the updated service credits will take effect.

(f) Interest on an updated service credit is earned for each whole calendar year beginning on the date the updated service credit takes effect and ending on the effective date of retirement.

Sec. 853.403 ~~[63.403]~~. APPROVAL OF ORDINANCE. (a) An ordinance adopted under Section 853.401 ~~[63.401 of this subtitle]~~ may not take effect unless the board of trustees approves the ordinance as meeting the requirements of this section. The board may not approve an ordinance unless the actuary first determines, and the board concurs in the determination, that all obligations charged against the municipality's account in the municipality accumulation fund, including obligations proposed in the ordinance, can be funded by the municipality within its maximum total contribution rate before the 25th anniversary of the date the updated service credits take effect.

(b) The board of trustees may adopt rules it finds necessary to *ensure* ~~[insure]~~ that the retirement system receives in a timely manner from a municipality the certified information the actuary requires to make the necessary determinations before the date the updated service credits take effect.

[Sections 853.404–853.500 ~~[63.404–63.500]~~ reserved for expansion]

#### SUBCHAPTER F. OPTIONAL MILITARY SERVICE

Sec. 853.501 ~~[63.501]~~. CREDITABLE MILITARY SERVICE. (a) The governing body of a participating municipality by ordinance may authorize eligible members in its



employment to establish credit in the retirement system for active military service performed as a member of the armed forces or armed forces reserves of the United States or of an auxiliary of the armed forces or armed forces reserves, during a period in which the United States is or was involved in a state of conflict with foreign forces.

(b) A member eligible to establish credit for military service creditable as provided by this section is one:

- (1) who is an employee of a municipality that has adopted an ordinance under this section;
- (2) who has at least 10 years of credited service in the retirement system;
- (3) who has been an employee of one or more participating municipalities for at least 10 years;
- (4) whose military service was terminated by release from active duty or discharge, on terms not dishonorable;
- (5) who does not receive and is not eligible to receive federal retirement payments based on 20 years or more of active military duty or its equivalent; and
- (6) who does not have and does not receive credit for the service in any other public retirement system or program established under laws of this state.

(c) A member may not establish more than 60 months of credit in the retirement system for military service.

(d) The board of trustees by rule shall determine the periods recognized for purposes of this subtitle as periods of organized conflict.

Sec. 853.502 [63.502]. ESTABLISHMENT OF MILITARY SERVICE CREDIT. (a) A member may establish credit for military service under this subchapter by depositing with the retirement system an amount equal to \$15 for each month for which credit is sought.

(b) A member must make the deposit required by this section before the first anniversary of the effective date of the ordinance adopted under Section 853.501 [63.501 of this subtitle] or before the first anniversary of the date the member becomes eligible to establish the credit, whichever is later.

(c) The employing municipality shall contribute for service established under this section an amount equal to the amount required of the member, times the municipality's current service matching percentage in effect on the date the member applies for credit under this section.

Sec. 853.503 [63.503]. USE OF MILITARY SERVICE CREDIT. (a) The retirement system shall use military service credit established under this subchapter in determining satisfaction of length-of-service requirements for benefits.

(b) When a person who has military service credit retires, the retirement system shall transfer to the current service annuity reserve fund the amounts paid by the person and the employing municipality under Section 853.502 [63.502 of this subtitle]. The retirement system shall use the amounts to make annuity payments to the person computed in the same manner as is the person's current service annuity, but the credit and the amounts may not be used in other computations, including computations of updated service credits, antecedent service credits, prior service credits, or special prior service credits.

*[Sections 853.504–853.600 reserved for expansion]*

#### SUBCHAPTER G. OPTIONAL UPDATED SERVICE CREDIT FOR TRANSFERRED SERVICE

Sec. 853.601 [63.601]. ORDINANCE AUTHORIZING UPDATED SERVICE CREDIT FOR TRANSFERRED SERVICE. (a) The governing body of a participating municipality in ordinances authorizing updated service credits under Section 853.401 [63.401] on or after January 1, 1984, may provide that those members who are eligible for such credits on the basis of service with the granting municipality, who have unforfeited credit for prior service or [and/or] current service with another participating municipality or

municipalities by reason of previous employment, and who are contributing members on the date prescribed by ~~[Subsection (e) of]~~ Section 853.402(e) [63.402], shall be credited in the retirement system with updated service credit calculated in the manner prescribed by Sections 853.401 [63.401] and 853.402 [63.402], except that in determining the base updated service credit of the member under ~~[Subdivision (1) of Subsection (e) of]~~ Section 853.402(c)(1), [63.402] all unforfeited credited service performed by the member by reason of previous employment in other participating municipalities prior to the date prescribed by ~~[Subsection (e) of]~~ Section 853.402(e) [63.402] shall be treated as if performed in the service of the municipality adopting the ordinance, and that amount shall be reduced by an amount equal to the sum of:

- (1) 2 times the amount credited to the member's individual accounts in the employees saving fund on the date prescribed in ~~[Subsection (e) of]~~ Section 853.402(e) [63.402], which any participating municipality has undertaken to match on a 1 to 1 ratio; plus
  - (2) 2.5 times the amount credited to the member's individual accounts, subject to a 1.5 to 1 matching ratio by any participating municipality; plus
  - (3) 3 times the amount credited to the member's individual accounts, subject to a 2 to 1 matching ratio by any participating municipality; and plus
  - (4) the sum of all updated service credits, prior service credits, special prior service credits, and antecedent service credits allowed to the member by any other participating municipality by which the member was previously employed and to which the member is entitled.
- (b) If the member is granted an updated service credit by a previously employing municipality on or after the granting of an updated service credit under Subsection (a) ~~[of this section]~~, the updated service credit granted under Subsection (a) ~~[of this section]~~ shall be reduced by the amount of increase in credits resulting from the granting of updated service credits by the previous employer.

CHAPTER 854 [64]. BENEFITS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 854.001 [64.001]. TYPES OF BENEFITS

Sec. 854.002 [64.002]. COMPOSITION OF RETIREMENT ANNUITY

Sec. 854.003 [64.003]. EFFECTIVE DATE OF RETIREMENT

Sec. 854.004 [64.004]. WHEN ANNUITY IS PAYABLE

Sec. 854.005 [64.005]. REDUCTION OF ANNUITY PAYMENTS ON REQUEST

[Sections 854.006–854.100 [64.006–64.100] reserved for expansion]

SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

Sec. 854.101 [64.101]. APPLICATION FOR SERVICE RETIREMENT

Sec. 854.102 [64.102]. ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY

Sec. 854.103 [64.103]. STANDARD SERVICE RETIREMENT ANNUITY

Sec. 854.104 [64.104]. OPTIONAL SERVICE RETIREMENT ANNUITY

Sec. 854.105 [64.105]. SELECTION OF OPTIONAL SERVICE RETIREMENT ANNUITY

[Sections 854.106–854.200 [64.106–64.200] reserved for expansion]

SUBCHAPTER C. OPTIONAL SERVICE RETIREMENT BENEFITS

Sec. 854.201 [64.201]. OPTIONAL SERVICE RETIREMENT ELIGIBILITY

Sec. 854.202 [64.202]. ADDITIONAL OPTIONAL SERVICE RETIREMENT ELIGIBILITY

Sec. 854.203 [64.203]. OPTIONAL INCREASE IN RETIREMENT ANNUITIES

Sec. 854.204 [64.204]. OPTIONAL BENEFIT FOR SURVIVING SPOUSE OF VESTED EMPLOYEE

[Sections 854.205–854.300 [64.205–64.300] reserved for expansion]

SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS

Sec. 854.301 [64.301]. APPLICATION FOR DISABILITY RETIREMENT ANNUITY

Sec. 854.302 [64.302]. ELIGIBILITY FOR DISABILITY RETIREMENT ANNUITY

Sec. 854.303 [64.303]. CERTIFICATION OF DISABILITY

Sec. 854.304 [64.304]. STANDARD DISABILITY RETIREMENT ANNUITY

Sec. 854.305 [64.304]. OPTIONAL DISABILITY RETIREMENT ANNUITY

Sec. 854.306 [64.305]. MEDICAL EXAMINATION OF DISABILITY RETIREE

Sec. 854.307 [64.306]. CERTIFICATION OF END OF DISABILITY

Sec. 854.308 [64.307]. RETURN OF DISABILITY RETIREE TO ACTIVE SERVICE OR EMPLOYMENT

Sec. 854.309 [64.308]. REFUND AT ANNUITY DISCONTINUANCE

[Sections 854.310–854.400 [64.309–64.400] reserved for expansion]

SUBCHAPTER E. OPTIONAL DISABILITY RETIREMENT BENEFITS

Sec. 854.401 [64.401]. ELIGIBILITY FOR SUPPLEMENTAL DISABILITY RETIREMENT ANNUITY

Sec. 854.402 [64.402]. CERTIFICATION AND FINDING OF DISABILITY

Sec. 854.403 [64.403]. SUPPLEMENTAL DISABILITY RETIREMENT ANNUITY

Sec. 854.404 [64.404]. CONDITIONS FOR BENEFITS

**Sec. 854.405 [64.405].** OPTIONAL OCCUPATIONAL DISABILITY BENEFITS PROGRAM

**Sec. 854.406 [64.406].** APPLICATION FOR OCCUPATIONAL DISABILITY BENEFITS

**Sec. 854.407 [64.407].** ELICIBILITY FOR BENEFITS AND DETERMINATION OF DISABILITY

**Sec. 854.408 [64.408].** STANDARD OCCUPATIONAL DISABILITY RETIREMENT ANNUITY

**Sec. 854.409 [64.409].** REPORTS REQUIRED OF RETIREES

**Sec. 854.410 [64.410].** OPTIONAL OCCUPATIONAL DISABILITY RETIREMENT ANNUITY

[Sections 854.411–854.500 [64.411–64.500] reserved for expansion]

**SUBCHAPTER F. DEATH BENEFITS**

**Sec. 854.501 [64.501].** RETURN OF CONTRIBUTIONS

**Sec. 854.502 [64.502].** EXCESS CONTRIBUTIONS OF DISABILITY RETIREE

[Sections 854.503–854.600 [64.503–64.600] reserved for expansion]

**SUBCHAPTER G. OPTIONAL DEATH BENEFITS**

**Sec. 854.601 [64.601].** COVERAGE IN SUPPLEMENTAL DEATH BENEFIT PROGRAM

**Sec. 854.602 [64.602].** EXTENDED SUPPLEMENTAL DEATH BENEFIT COVERAGE

**Sec. 854.603 [64.603].** MEMBER SUPPLEMENTAL DEATH BENEFIT

**Sec. 854.604 [64.604].** RETIREE SUPPLEMENTAL DEATH BENEFIT

**Sec. 854.605 [64.605].** BENEFICIARY OF SUPPLEMENTAL DEATH BENEFIT

**CHAPTER 854 [64]. BENEFITS**

**SUBCHAPTER A. GENERAL PROVISIONS**

**Sec. 854.001 [64.001].** TYPES OF BENEFITS. The types of benefits payable by the retirement system are:

- (1) service retirement benefits;
- (2) disability retirement benefits; and
- (3) death benefits.

**Sec. 854.002 [64.002].** COMPOSITION OF RETIREMENT ANNUITY. (a) Each retirement annuity payable under this subtitle consists of a prior service annuity and a current service annuity.

(b) A prior service annuity is actuarially determined from any updated service credit or any prior service, special prior service, or antecedent service credit in effect for a member on the date of retirement, plus accumulated interest.

(c) A current service annuity is actuarially determined on the date of a member's retirement from the sum of:

(1) the amount credited to the member's individual account in the employees saving fund; and

(2) the amount from the municipality accumulation fund equal to the amount in the member's individual account or a greater amount authorized by a participating municipality under Section 855.501 [65.501 of this subtitle].

Sec. 854.003 ~~[64.003]~~. **EFFECTIVE DATE OF RETIREMENT.** (a) The effective date of a member's service retirement is the date the member designates at the time the member applies for retirement under Section 854.101 ~~[64.101 of this subtitle]~~, but the date must be the last day of a calendar month and may not precede the date the member terminates employment with all participating municipalities.

(b) If a member dies before retirement and has a valid optional retirement annuity selection on file with the retirement system, the member is considered to have retired on the last day of the month immediately preceding the month in which death occurred.

(c) The effective date of a member's disability retirement is the date designated on the application for retirement filed by or for the member as provided by Section 854.301 ~~[64.301 of this subtitle]~~, but the date may not precede the date the member terminates employment with all participating municipalities.

Sec. 854.004 ~~[64.004]~~. **WHEN ANNUITY IS PAYABLE.** An annuity under this subtitle is payable for a period beginning on the last day of the first month following the month in which retirement occurs and ending, except as otherwise provided by this subtitle, on the last day of the month immediately preceding the month in which death occurs.

Sec. 854.005 ~~[64.005]~~. **REDUCTION OF ANNUITY PAYMENTS ON REQUEST.** (a) An annuitant by written request may authorize the retirement system to reduce the annuitant's monthly payment to an amount specified in the request. In writing, the annuitant may subsequently request the retirement system to increase the annuitant's monthly payment to any specified amount that does not exceed the amount originally payable.

(b) If the retirement system receives a request under Subsection (a) ~~[of this section]~~, the director may cause the monthly annuity payment of the requesting annuitant to be reduced or increased as specified in the request.

(c) Any amounts by which an annuity is reduced under this section are forfeited to the retirement system and are not recoverable by any person.

[Sections 854.006–854.100 ~~[64.006–64.100]~~ reserved for expansion]

#### SUBCHAPTER B. SERVICE RETIREMENT BENEFITS

Sec. 854.101 ~~[64.101]~~. **APPLICATION FOR SERVICE RETIREMENT.** A member may apply for service retirement by filing a retirement application with the board of trustees not less than 30 days nor, if the member has not previously selected an optional service retirement annuity under Section 854.105 ~~[64.105 of this subtitle]~~, more than 90 days before the date the member wishes to retire.

Sec. 854.102 ~~[64.102]~~. **ELIGIBILITY FOR SERVICE RETIREMENT ANNUITY.** (a) A member is eligible to retire and receive a service retirement annuity, if the member:

(1) is at least 60 years old and has at least 15 years of credited service in the retirement system; or

(2) has at least 28 years of credited service in the retirement system.

(b) A member is eligible to retire and receive a service retirement annuity, if the member is at least 50 years old and has at least 25 years of credited service in the retirement system performed for one or more municipalities that:

(1) have effective dates of participation in the retirement system after May 28, 1969; or

(2) have adopted a like provision under Section 854.201 ~~[64.201]~~ or 854.202 ~~[64.202 of this subtitle]~~.

(c) A member is eligible to retire and receive a service retirement annuity, if the member is at least 60 years old and has at least 10 years of credited service in the retirement system performed for one or more municipalities that either have an effective date of participation in the retirement system after August 26, 1979, or have adopted a like provision under Section 854.202 ~~[64.202 of this subtitle]~~.

(d) A member employed by a municipality having an effective date of participation in the retirement system after May 28, 1969, may terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age provided by law for service retirement of employees of the municipality, if the member has at least 20 years of credited service performed for one or more municipalities that are either subject to this subsection or have adopted a like provision under Section 854.201(c) ~~[64.201(c) of this subtitle]~~.

(e) A member employed by a municipality having an effective date of participation in the retirement system after August 26, 1979, may terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age and service requirement, if the member has at least 10 years of credited service performed for one or more municipalities that are either subject to this subsection or have adopted a like provision under Section 854.202 ~~[64.202 of this subtitle]~~.

(f) A member is eligible to retire and receive a service retirement annuity if the member has at least 25 years of credited service in the retirement system performed for one or more municipalities that have participation dates after September 1, 1987, or that have adopted a like provision under Section 854.202(f) ~~[64.202(f) of this subtitle]~~.

Sec. 854.103 ~~[64.103]~~. STANDARD SERVICE RETIREMENT ANNUITY. (a) The standard service retirement annuity payable under this subtitle is the sum of a member's prior service annuity and current service annuity.

(b) A standard service retirement annuity is payable throughout the life of a retiree. If a retiree dies before 60 monthly payments of a standard service retirement annuity have been made, the remainder of the 60 monthly payments are payable to the retiree's designated beneficiary.

Sec. 854.104 ~~[64.104]~~. OPTIONAL SERVICE RETIREMENT ANNUITY. (a) Instead of the standard service retirement annuity payable under Section 854.103 ~~[64.103 of this subtitle]~~, a retiring member may elect to receive an optional service retirement annuity under this section.

(b) An optional service retirement annuity is payable throughout the life of the retiree and is actuarially adjusted from the standard service retirement annuity to its actuarial equivalent under the option selected under Subsection (c) ~~[of this section]~~.

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate;

(4) if the retiree dies before 180 monthly annuity payments have been made, the remainder of the 180 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

(5) the annuity is payable only during the retiree's lifetime.

(d) An option under Subsection (c) ~~[of this section]~~ applies to both prior and current service annuities, except that prior service annuities are subject to reduction under Section 855.308(f) ~~[65.308(f) of this subtitle]~~.

(e) To select an optional service retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

Sec. 854.105 ~~[64.105]~~. SELECTION OF OPTIONAL SERVICE RETIREMENT ANNUITY. (a) A member who is eligible for service retirement may, while continuing to

perform service for a participating municipality, file with the board of trustees, on a form prescribed by the board, a selection of an optional service retirement annuity available under Section ~~854.104~~ [64.104 of this subtitle] and a designation of beneficiary. An annuity selected as provided by this section is payable on the member's retirement or on the member's death before retirement.

(b) A member may change a selection of an optional annuity or a designation of beneficiary at any time before the member's retirement or death in the same manner that the original selection and designation were made.

(c) If a member eligible under this section to select an optional service retirement annuity dies before retirement without having made a selection, the member's surviving spouse may select an optional annuity in the same manner as if the member had made the selection. If there is no surviving spouse, the executor or administrator of the member's estate may elect:

(1) for an estate beneficiary to receive the optional annuity under Section ~~854.104(c)(4)~~ [64.104(c)(4) of this subtitle], in which case the member will be considered to have retired on the last day of the month immediately preceding the month in which death occurred; or

(2) for the estate to receive a refund of the member's accumulated contributions under Section ~~854.501~~ [64.501 of this subtitle], in which case the member will be considered to have been a contributing member at the time of death.

[Sections ~~854.106–854.200~~ [64.106–64.200] reserved for expansion]

#### SUBCHAPTER C. OPTIONAL SERVICE RETIREMENT BENEFITS

Sec. ~~854.201~~ [64.201]. **OPTIONAL SERVICE RETIREMENT ELIGIBILITY.** (a) The governing body of a municipality having an effective date of participation in the retirement system before May 29, 1969, by ordinance may authorize eligibility for a service retirement annuity as provided by this section.

(b) The governing body may authorize a member who is an employee of the municipality to be eligible for service retirement who is at least 50 years old and has at least 25 years of credited service performed for one or more municipalities that either have authorized eligibility under this section or are subject to Section ~~854.102(d)~~ [64.102(d) of this subtitle], or to terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age provided by law for service retirement of employees of the municipality, if the member has at least 20 years of credited service performed for one or more municipalities that either have authorized eligibility under this section or are subject to Section ~~854.102(d)~~ [64.102(d) of this subtitle].

(c) A governing body may not adopt an ordinance under this section unless the actuary first determines that all obligations charged against the municipality's account in the municipality accumulation fund, including the obligations proposed in the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

Sec. ~~854.202~~ [64.202]. **ADDITIONAL OPTIONAL SERVICE RETIREMENT ELIGIBILITY.** (a) The governing body of a municipality that has an effective date of participation in the retirement system after December 31, 1975, or that has previously authorized updated service credits, by ordinance may authorize eligibility for a service retirement annuity as provided by this section for a member who is or was an employee of any participating department of the municipality.

(b) The governing body may authorize a member to retire and receive a service retirement annuity, if the member:

(1) is at least 50 years old and has at least 25 years of credited service performed for one or more municipalities that have authorized eligibility under this subdivision; or

(2) is at least 60 years old and has at least 10 years of credited service performed for one or more municipalities that either have authorized eligibility under this subdivision or have a participation date in the retirement system after August 26, 1979.

(c) The governing body may authorize a member who is or was an employee of the municipality to terminate employment and remain eligible to retire and receive a service retirement annuity at any time after the member attains an applicable age and service requirement, if the member has at least 10 years of credited service performed for one or more municipalities that either have authorized eligibility under this subsection or are subject to Section 854.102(e) ~~[64.102(e) of this subtitle]~~.

(d) An ordinance adopted under this section must also include the provisions specified in Section 852.105 ~~[62.105 of this subtitle]~~. A governing body may not adopt an ordinance under this section unless the actuary first determines, on the basis of mortality and other tables adopted by the board of trustees, that all obligations of the municipality to the municipality accumulation fund, including obligations proposed under the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

(e) The governing body shall specify the effective date of an ordinance under this section, which may be the first day of any month after the month in which the actuary makes the determination required by Subsection (d) ~~[of this section]~~.

(f) The governing body may authorize a member to retire and receive a service retirement benefit if the member has at least 25 years of credited service performed for one or more municipalities that either have authorized eligibility under this subdivision or have a participation date in the retirement system after September 1, 1987.

Sec. 854.203 ~~[64.203]~~. **OPTIONAL INCREASE IN RETIREMENT ANNUITIES.** (a) The governing body of a participating municipality by ordinance, from time to time but not more frequently than once in each 12-month period, may authorize and provide for increased annuities to be paid to retirees and beneficiaries of deceased retirees of the municipality. An annuity increased under this section replaces any annuity or increased annuity previously granted to the same person.

(b) The amount of annuity increase under this section is computed as the sum of the prior and current service annuities on the effective date of retirement of the person on whose service the annuities are based, multiplied by:

(1) the percentage change in the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor, from December of the year immediately preceding the effective date of the person's retirement to the December that is 13 months before the effective date of the ordinance providing the increase; and

(2) a fraction, specified by the governing body in the ordinance, that is not less than 10 percent nor more than 70 percent and is a multiple of 5 percent.

(c) Except as provided by Subsection (g) ~~[of this section]~~, the effective date of an ordinance under this section is January 1 of the year that begins after the year in which the governing body adopts and notifies the retirement system of the ordinance.

(d) An increase in an annuity that was reduced because of an option selection is reducible in the same proportion and in the same manner that the original annuity was reduced.

(e) If a computation under Subsection (b) ~~[of this section]~~ does not result in an increase in the amount of an annuity, the amount of the annuity may not be changed under this section.

(f) The amount by which an increase under this section exceeds all previously granted increases to an annuitant is payable as a prior service annuity, is an obligation of the municipality's account in the municipality accumulation fund, and is subject to reduction under Section 855.308(f) ~~[65.308(f) of this subtitle]~~.

(g) An ordinance under this section may not take effect until it is approved by the board of trustees as meeting the requirements of this section. The board may not approve an ordinance unless the actuary first determines that all obligations charged



against the municipality's account in the municipality accumulation fund, including the obligations proposed in the ordinance, can be funded by the municipality within its maximum contribution rate before the 25th anniversary of the effective date of the increases.

(h) A governing body may not authorize and provide for annuity increases under this section unless it simultaneously provides for updated service credits under Subchapter E of Chapter 853 ~~[63 of this subtitle]~~.

Sec. 854.204 ~~[64.204]~~. **OPTIONAL BENEFIT FOR SURVIVING SPOUSE OF VESTED EMPLOYEE.** (a) This section applies to all municipalities having a participation date in the retirement system after August 31, 1987. The governing body of any municipality having an earlier effective date of participation may by ordinance adopt the provisions of this section if the actuary first determines, on the basis of mortality and other tables adopted by the board of trustees, that all obligations of the municipality to the municipality accumulation fund, including obligations proposed under the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

(b) If a member who has sufficient credited service performed for municipalities that have adopted or are subject to this section to entitle the member to withdraw from service, to leave on deposit with the retirement system the member's accumulated contributions and, on attainment of an age prescribed by this subtitle, to retire with a service retirement benefit dies before becoming eligible for service retirement and leaves surviving a lawful spouse whom the member has designated as beneficiary entitled to payment of the member's accumulated contributions in the event of the member's death before retirement, the surviving spouse may by written notice filed with the board elect to leave the accumulated deposits with the retirement system subject to the terms of this section. If the accumulated deposits have not been withdrawn before such time as the member, if living, would have become entitled to service retirement, the surviving spouse may elect to receive, in lieu of the accumulated deposits, an annuity payable monthly during the lifetime of the surviving spouse in the amount that would have been payable to the surviving spouse had the member lived and retired at that date under an optional annuity described by Section 854.104(c)(1) ~~[64.104(c)(1) of this subtitle]~~.

(c) At any time before payment of the first monthly benefit of an annuity, a surviving spouse to whom this section applies may, after filing a written application with the board of trustees, receive payment of the accumulated contributions credited to the account of the member in lieu of any benefits otherwise payable under this section. If the surviving spouse dies before payment of the first monthly benefit of an annuity allowed under this section, the accumulated contributions credited to the account of the member shall be paid to the estate of the spouse.

[Sections 854.205–854.300 ~~[64.205–64.300]~~ reserved for expansion]

#### SUBCHAPTER D. DISABILITY RETIREMENT BENEFITS

Sec. 854.301 ~~[64.301]~~. **APPLICATION FOR DISABILITY RETIREMENT ANNUITY.**

(a) A member may apply for a disability retirement annuity by:

(1) filing an application for retirement with the board of trustees; or

(2) having an application filed with the board by the member's employer or legal representative.

(b) An application for a disability retirement annuity may not be made less than 30 nor more than 90 days before the date the member wishes to retire.

(c) An applicant must submit to medical examination as required by the medical board.

Sec. 854.302 ~~[64.302]~~. **ELIGIBILITY FOR DISABILITY RETIREMENT ANNUITY.**

(a) A member who has less than 10 years of credited service in the retirement system is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section 854.303(b)(1) ~~[64.303(b)(1) of this subtitle]~~.

(b) A member who has at least 10 years of credited service in the retirement system but is not eligible for a service retirement annuity is eligible to retire and receive a disability retirement annuity if the member is the subject of a certification issued as provided by Section ~~854.303(b)(2)~~ [64.303(b)(2) of this subtitle].

Sec. ~~854.303~~ [64.303]. CERTIFICATION OF DISABILITY. (a) As soon as practicable after an application for disability retirement is filed, the medical board shall evaluate the medical and other pertinent information concerning the member's application.

(b) The medical board shall issue a certification of disability and send it to the board of trustees if the medical board finds:

(1) in the case of a member who has less than 10 years of credited service in the retirement system, that:

(A) the member is mentally or physically incapacitated for the further performance of duty;

(B) the incapacity is the direct result of injuries sustained during membership by external and violent means as a direct and proximate result of the performance of duty;

(C) the incapacity is likely to be permanent; and

(D) the member should be retired; or

(2) in the case of a member who has at least 10 years of credited service in the retirement system but is not eligible for a service retirement annuity, that:

(A) the member is mentally or physically incapacitated for the further performance of duty;

(B) the incapacity is likely to be permanent; and

(C) the member should be retired.

Sec. ~~854.304~~ [64.304]. STANDARD DISABILITY RETIREMENT ANNUITY. (a) The standard disability retirement annuity payable under this subtitle is the sum of a member's prior service annuity and current service annuity.

(b) A prior service annuity is subject to reduction as provided by Section ~~855.308(f)~~ [65.308(f) of this subtitle].

(c) A standard disability retirement annuity is payable throughout the life of a retiree. When a retiree who receives an annuity under this section dies, an additional benefit may be payable under Section ~~854.502~~ [64.502 of this subtitle].

Sec. ~~854.305~~ [64.304]. OPTIONAL DISABILITY RETIREMENT ANNUITY. (a) Instead of the standard disability retirement annuity payable under Section ~~854.304~~ [64.304 of this subtitle], a member retiring for disability may elect to receive an optional disability retirement annuity under this section.

(b) An optional disability retirement annuity is payable throughout the life of the retiree and is actuarially adjusted from the standard disability retirement annuity to its actuarial equivalent under the option selected under Subsection (c) [of this section].

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

(4) if the retiree dies before 180 monthly annuity payments have been made, the remainder of the 180 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(d) An option under Subsection (c) ~~[of this section]~~ applies to both prior and current service annuities, except that prior service annuities are subject to reduction under Section 855.308(f) ~~[65.308(f) of this subtitle]~~.

(e) To select an optional disability retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(f) If a disability retirement annuity is discontinued under Section 854.308 ~~[64.307 of this subtitle]~~, any selection of an option that applies to the annuity becomes void.

Sec. 854.306 ~~[64.305]~~. MEDICAL EXAMINATION OF DISABILITY RETIREE. (a) Once each year during the first five years after a person retires for disability, and once in each three-year period after that, the board of trustees may require a disability retiree who is less than 60 years old to undergo a medical examination.

(b) An examination under this section may be held at the retiree's residence or at any place mutually agreed to by the board and the retiree. The board shall designate a physician to perform the examination.

(c) If a disability retiree refuses to submit to a medical examination as provided by this section, the board of trustees shall suspend the retiree's annuity payments until the retiree submits to an examination. If a retiree has not submitted to an examination as provided by this section before the first anniversary of the date of first refusal, the board shall revoke all rights of the retiree to an annuity.

Sec. 854.307 ~~[64.306]~~. CERTIFICATION OF END OF DISABILITY. (a) If the medical board finds that a disability retiree is no longer mentally or physically incapacitated for the performance of duty or is able to engage in gainful occupation, it shall certify its findings and submit them to the board of trustees.

(b) If the board of trustees concurs in a certification under this section, it shall discontinue annuity payments to the retiree.

Sec. 854.308 ~~[64.307]~~. RETURN OF DISABILITY RETIREE TO ACTIVE SERVICE OR EMPLOYMENT. (a) If a retiree who is less than 60 years old and who is receiving a disability retirement annuity resumes employment with a participating municipality or otherwise becomes gainfully employed, the person automatically resumes membership in the retirement system, and the board of trustees shall terminate the person's annuity payments.

(b) If a person resumes membership under this section, the retirement system shall restore to effect any prior service credit, special prior service credit, antecedent service credit, or updated service credit used in determining the amount of the person's annuity at the time of disability retirement. If the person subsequently retires, the retirement system shall allow the person credit for all current service for which required contributions have been made and not withdrawn.

Sec. 854.309 ~~[64.308]~~. REFUND AT ANNUITY DISCONTINUANCE. (a) Except as provided by Subsection (b) ~~[of this section]~~, if a disability retirement annuity is discontinued under Section 854.307 ~~[64.306 of this subtitle]~~ or the right to an annuity revoked under Section 854.306(c) ~~[64.305(c) of this subtitle]~~, the retiree is entitled to a lump-sum payment in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of current service annuity payments made before the date the annuity was discontinued or the right to an annuity revoked.

(b) The benefit provided by this section is not payable to a retiree who resumes employment with a participating subdivision or otherwise becomes gainfully employed.

(c) The benefit provided by this section is payable from the current service annuity reserve fund.

[Sections 854.310–854.400 ~~[64.309–64.400]~~ reserved for expansion]

#### SUBCHAPTER E. OPTIONAL DISABILITY RETIREMENT BENEFITS

Sec. 854.401 ~~[64.401]~~. **ELIGIBILITY FOR SUPPLEMENTAL DISABILITY RETIREMENT ANNUITY.** (a) A member as an employee of a municipal department included, as provided by Section 852.003 ~~[62.003 of this subtitle]~~, in the coverage of the supplemental disability benefits fund is eligible to retire and receive a supplemental disability retirement annuity if the member:

(1) is eligible to receive a disability retirement annuity under Section 854.302 ~~[64.302 of this subtitle]~~;

(2) is the subject of a certification and finding under Section 854.402 ~~[64.402 of this subtitle]~~, as well as a certification under the applicable finding provided by Section 854.303 ~~[64.303 of this subtitle]~~; and

(3) ~~filed~~ ~~[files]~~ an application for the benefits before January 1, 1989.

(b) Any claim for supplemental disability benefits not filed with the board of trustees before January 1, 1989, is barred.

Sec. 854.402 ~~[64.402]~~. **CERTIFICATION AND FINDING OF DISABILITY.** (a) The medical board shall issue and send to the board of trustees a certification of disability for a member included in the coverage of the supplemental disability benefits fund if, after a medical examination of the member, the medical board finds that the member is mentally or physically incapacitated and is unable to engage in gainful occupation.

(b) A member is entitled to a supplemental disability retirement annuity if the board of trustees, after receiving a certification of disability for the member under this section, finds that the member's incapacity:

(1) is the direct result of injuries sustained after the effective date of coverage of the member in the supplemental disability benefits fund and before January 1, 1988, as a direct and proximate result of the performance of the duties of the member's employment; and

(2) is likely to be permanent.

Sec. 854.403 ~~[64.403]~~. **SUPPLEMENTAL DISABILITY RETIREMENT ANNUITY.** (a) A supplemental disability retirement annuity payable under this subtitle is an amount that, when added to a member's standard disability retirement annuity or, if the member is eligible for service retirement, to the member's standard service retirement annuity, equals one-half of the member's average monthly compensation for service as an employee of a participating department of a municipality:

(1) for the 60 months immediately preceding the month in which the injury occurred; or

(2) if the member did not perform service in each of the 60 months immediately preceding the month in which the injury occurred, for the number of months of service within the 60-month period.

(b) In a computation of average monthly compensation under this section, compensation is excluded that exceeds the maximum amount on which the member was required to make contributions to the retirement system.

Sec. 854.404 ~~[64.404]~~. **CONDITIONS FOR BENEFITS.** (a) Supplemental disability benefits payable from the supplemental disability benefits fund cease on the death of the disability retiree and are, except as provided by this subchapter, subject to the same terms of issuance as are standard disability retirement benefits. The suspension or discontinuance of a disability retirement annuity automatically suspends or discontinues, as applicable, a supplemental disability retirement annuity based on the same service.

(b) The board of trustees may reduce proportionally all supplemental disability benefits payable from the supplemental benefits fund at any time and for a period that the board finds necessary to prevent payments from the fund in a year from exceeding available assets in the fund in that year.

Sec. ~~854.405~~ [64.405]. OPTIONAL OCCUPATIONAL DISABILITY BENEFITS PROGRAM. (a) This section and Sections ~~854.406, 854.407, 854.408, 854.409, and 854.410~~ [64.406, 64.407, 64.408, 64.409, and 64.410 of this subtitle], providing for an occupational disability benefits program, apply to municipalities having a participation date in the retirement system after August 31, 1987. The governing body of any municipality having an earlier effective date of participation may by ordinance adopt the provisions of this section and Sections ~~854.406, 854.407, 854.408, 854.409, and 854.410~~ [64.406, 64.407, 64.408, 64.409, and 64.410] in lieu of the disability program provided for under Subchapter D [of this chapter].

(b) A governing body may not adopt an ordinance under this section unless the actuary first determines, on the basis of mortality and other tables adopted by the board of trustees, that all obligations of the municipality to the municipality accumulation fund, including obligations proposed under the ordinance, can be funded by the municipality within its maximum contribution rate and within its amortization period.

Sec. ~~854.406~~ [64.406]. APPLICATION FOR OCCUPATIONAL DISABILITY BENEFITS. A member who is employed by a municipality that has adopted or is subject to the occupational disability benefits program may apply for an occupational disability retirement benefit in the same form and manner as that prescribed by Section ~~854.301~~ [64.301 of this subtitle].

Sec. ~~854.407~~ [64.407]. ELIGIBILITY FOR BENEFITS AND DETERMINATION OF DISABILITY. (a) As soon as practicable after an application for occupational disability benefits has been filed, the medical board shall evaluate the medical and other pertinent information concerning the member's application. The medical board may require the member to be examined by one or more physicians designated by it.

(b) The medical board shall issue a certification of occupational disability and send it to the board of trustees if the medical board finds:

- (1) that the member is physically or mentally disabled for further performance of the duties of the member's employment;
- (2) that the disability is likely to be permanent; and
- (3) that the member should be retired.

(c) A member who is issued a certificate by the medical board as provided by this section is eligible to receive a standard occupational disability retirement annuity on the terms prescribed by Section ~~854.408~~ [64.408 of this subtitle].

Sec. ~~854.408~~ [64.408]. STANDARD OCCUPATIONAL DISABILITY RETIREMENT ANNUITY. (a) The standard occupational disability retirement annuity payable under this subchapter is the sum of the member's prior service annuity and current service annuity, payable monthly during the lifetime of the retiree, but reduced as to any month or series of months as provided in this section. A prior service annuity is subject to reduction under Section ~~855.308(f)~~ [65.308(f) of this subtitle].

(b) During any month in which a retiree who is less than 60 years old receives earned income subject to taxation under the Federal Insurance Contributions Act or *that [which]* would be subject to those taxes if the employer were not an exempt organization, the standard occupational disability retirement annuity may not exceed the greater of the following amounts:

- (1) the amount that is required to be added to the retiree's earned income for the month to equal the average compensation on which the retiree made membership contributions to the retirement system during the 12 months preceding disability retirement; or
- (2) the monthly annuity attributable to the retiree's accumulated contributions at the time of the person's retirement.

(c) For purposes of this section, the amount received as the standard occupational disability retirement benefit during any month is considered to include  $\frac{1}{2}$  of the amount of any distributive benefit payable to the member under authority of Section ~~855.311~~ [65.311 of this subtitle] for the calendar year, but any amount by which the annuity is increased pursuant to Section ~~854.203~~ [64.203 of this subtitle] is excluded.

(d) If a retiree is paid an occupational disability retirement annuity for any month or series of months in amounts exceeding the sum allowable under Subsection (b) ~~[of this section]~~, the retirement system shall reduce subsequent monthly payments successively until the amounts of the overpayments have been offset.

Sec. ~~854.409~~ [64.409]. **REPORTS REQUIRED OF RETIREES.** (a) A disability retiree who is less than 60 years old and who accepts employment or during any month receives income that is subject to taxation under the Federal Insurance Contributions Act shall promptly notify the board of trustees in writing if the amount of the earnings, when added to the amount of the standard occupational disability retirement benefit, produces a sum in excess of the average monthly compensation on which the retiree made member contributions during the 12-month period preceding the date of the person's retirement.

(b) Each retiree who is receiving an occupational disability retirement annuity and is less than 60 years old shall make annual reports to the board of trustees on such form as the board may prescribe, concerning receipt by the retiree of income that is subject to taxation under the Federal Insurance Contributions Act or that would be subject to those taxes if the employer were not an exempt organization, along with any supporting information as may be required by the board of trustees. If a retiree fails to provide the information required under this section, the director may suspend payments of the annuity until the retiree provides the required information.

Sec. ~~854.410~~ [64.410]. **OPTIONAL OCCUPATIONAL DISABILITY RETIREMENT ANNUITY.** (a) Instead of the standard occupational disability retirement annuity payable under Section ~~854.408~~ [64.408 of this subtitle], a member retiring for disability may elect to receive an optional occupational disability retirement annuity under this section.

(b) An optional occupational disability retirement annuity is payable throughout the life of the retiree and is actuarially adjusted from the standard occupational disability retirement annuity to its actuarial equivalent under the option selected under Subsection (c) ~~[of this section]~~.

(c) An eligible person may select any optional annuity approved by the board of trustees, the entire benefit of which is certified by the actuary as the actuarial equivalent of the annuity to which the person is entitled, or may select one of the following options, which provide that:

(1) after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments is payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate; or

(4) if the retiree dies before 180 monthly annuity payments have been made, the remainder of the 180 payments is payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(d) An option under Subsection (c) ~~[of this section]~~ applies to both prior and current service annuities, except that prior service annuities are subject to reduction under Section ~~855.308(f)~~ [65.308(f) of this subtitle].

(e) To select an optional occupational disability retirement annuity, a member or retiree must make the selection and designate a beneficiary on a form prescribed by and filed with the board of trustees before the 31st day after the effective date of retirement.

(f) If a retiree's disability retirement annuity is subject to reduction under Section ~~854.408~~ [64.408 of this subtitle], the reduction of the optional occupational disability retirement annuity will be based on the relationship of the optional annuity to the standard disability retirement annuity.

[Sections 854.411–854.500 [64.411–64.500] reserved for expansion]

#### SUBCHAPTER F. DEATH BENEFITS

Sec. 854.501 [64.501]. RETURN OF CONTRIBUTIONS. (a) Except as provided by Subsection (c) [~~of this section~~], if a member dies before retirement, a lump-sum death benefit is payable from the employees saving fund in the amount of:

- (1) the amount credited to the member's individual account in the fund; plus
- (2) interest computed from the beginning of the year in which death occurs through the end of the month immediately preceding the month in which death occurs at the rate allowed on member contributions during the preceding year.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) A benefit is not payable under this section if an annuity based on the decedent's service is payable under this subtitle.

Sec. 854.502 [64.502]. EXCESS CONTRIBUTIONS OF DISABILITY RETIREE. (a) If a person dies who receives a standard disability retirement annuity, a lump-sum death benefit is payable in an amount, if any, by which the amount in the retiree's individual account in the employees saving fund at the time of disability retirement exceeds the amount of current service annuity payments made before the retiree's death.

(b) The benefit provided by this section is payable to the decedent's estate unless the decedent has directed that the benefit be paid otherwise.

(c) The benefit provided by this section is payable from the current service annuity reserve fund.

[Sections 854.503–854.600 [64.503–64.600] reserved for expansion]

#### SUBCHAPTER G. OPTIONAL DEATH BENEFITS

Sec. 854.601 [64.601]. COVERAGE IN SUPPLEMENTAL DEATH BENEFIT PROGRAM. (a) An employee of a participating municipality is included within the coverage of the supplemental death benefit program on the first day of the first month in which:

- (1) the employing municipality is participating in the supplemental death benefits fund for coverage of all members it employs;
- (2) the employee is a member of the retirement system; and
- (3) the employee is required to make a contribution to the retirement system.

(b) Once established, coverage of a person in the supplemental death benefit program continues until the last day of a month in which a requirement of Subsection (a) [~~of this section~~] is not met.

Sec. 854.602 [64.602]. EXTENDED SUPPLEMENTAL DEATH BENEFIT COVERAGE. (a) A member included in the coverage of the supplemental death benefit program who fails to earn compensation in a month for service to a municipality participating in the supplemental death benefits fund is eligible to receive extended coverage in the program on complying with this section.

(b) A member may apply to the retirement system for extended program coverage and submit evidence of eligibility for extended coverage.

(c) The board of trustees shall grant extended coverage in the supplemental death benefit program to an applicant, if the board finds:

- (1) that as a result of illness or injury, the member is unable to engage in gainful occupation; and
- (2) that the member made a required contribution to the retirement system as an employee of a municipality participating in the supplemental death benefits fund for the month immediately preceding the first full month in which the member was unable to engage in gainful occupation.

(d) Once established, extended coverage of a person in the supplemental death benefit program continues until the last day of the month in which:

- (1) the member returns to work as an employee of a participating municipality;
- (2) the board of trustees finds that the member is able to engage in gainful occupation;
- (3) the person's membership in the retirement system is terminated; or
- (4) the member retires under this subtitle.

(e) The board of trustees by rule may require a member to submit to it annual proof of continued inability to engage in gainful occupation. The board may require a member to undergo a medical examination by a physician designated by the board. Failure of a member to undergo a medical examination as required by this subsection is a ground for the board's finding that the member has become able to engage in gainful occupation.

Sec. 854.603 [64.603]. MEMBER SUPPLEMENTAL DEATH BENEFIT. (a) If a person included in the coverage or extended coverage of the supplemental death benefit program dies, a lump-sum supplemental death benefit is payable from the supplemental death benefits fund in an amount equal to the current annual salary of the member at the time of death.

(b) Except as provided by Subsection (c) [~~of this section~~], the current annual salary of a member is computed as the amount paid to the member for service on which contributions were made to the retirement system during the 12 months immediately preceding the month of death. If a member did not receive compensation for service in each of the 12 months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the amount paid to the member on which contributions were made to the system during the period of employment within the 12-month period. If a member did not receive compensation for service in any of the 12 months immediately preceding the month of death, the member's current annual salary is computed by converting to an annual basis the rate of compensation payable to the member during the month of death.

(c) The current annual salary of a member included in the extended coverage of the supplemental death benefit program is computed in the manner provided by Subsection (b) [~~of this section~~] but as if the member had died during the first month of extended coverage.

(d) If a member makes contributions to the retirement system during the same month as an employee of more than one municipality participating in the supplemental death benefits fund, a death benefit is payable only on the basis of the member's most recent employment.

(e) The board of trustees by rule may require such proof of compensation and periods of employment as it finds necessary.

Sec. 854.604 [64.604]. RETIREE SUPPLEMENTAL DEATH BENEFIT. If a retiree dies whose most recent employment as a member of the retirement system was with a municipality that has elected to provide, and continues to provide, postretirement supplemental death benefits, a lump-sum supplemental death benefit is payable from the fund in the amount of \$2,500.

Sec. 854.605 [64.605]. BENEFICIARY OF SUPPLEMENTAL DEATH BENEFIT. (a) Unless a member has directed otherwise on a form prescribed by the board of trustees and filed with the retirement system:

- (1) a supplemental death benefit under Section 854.603 [~~64.603 of this subtitle~~] is payable to the person entitled to receive the decedent's accumulated contributions; and
- (2) a supplemental death benefit under Section 854.604 [~~64.604 of this subtitle~~] is payable to a person entitled to receive any remaining payments of the decedent's annuity.

(b) If a person entitled under this section to receive a supplemental death benefit does not survive the member or retiree covered by the supplemental death benefit program, the benefit is payable to the estate of the covered member or retiree.



## CHAPTER 855 [65]. ADMINISTRATION

## SUBCHAPTER A. BOARD OF TRUSTEES

Sec. 855.001 [65.001]. COMPOSITION OF BOARD OF TRUSTEES

Sec. 855.002 [65.002]. APPOINTMENT

Sec. 855.003 [65.003]. ELIGIBILITY

Sec. 855.004 [65.004]. TERM OF OFFICE

Sec. 855.005 [65.005]. OATH OF OFFICE

Sec. 855.006 [65.006]. APPLICATION OF SUNSET ACT

Sec. 855.007 [65.007]. MEETINGS

Sec. 855.008 [65.008]. COMPENSATION; EXPENSES

Sec. 855.009 [65.009]. VOTING

[Sections 855.010–855.100 [65.010–65.100] reserved for expansion]

## SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

Sec. 855.101 [65.101]. ADMINISTRATION

Sec. 855.102 [65.102]. RULEMAKING

Sec. 855.103 [65.103]. ADMINISTERING SYSTEM ASSETS

Sec. 855.104 [65.104]. ACCEPTING GIFT, GRANT, OR BEQUEST

Sec. 855.105 [65.105]. INDEBTEDNESS; PAYMENT

Sec. 855.106 [65.106]. GRANTS AND PAYMENT OF BENEFITS

Sec. 855.107 [65.107]. AUDIT

Sec. 855.108 [65.108]. DESIGNATION OF AUTHORITY TO SIGN VOUCHERS

Sec. 855.109 [65.109]. DEPOSITORIES

Sec. 855.110 [65.110]. ADOPTING RATES AND TABLES

Sec. 855.111 [65.111]. CERTIFICATION OF RATES

Sec. 855.112 [65.112]. RECORDS OF BOARD OF TRUSTEES

Sec. 855.113 [65.113]. OFFICE

Sec. 855.114 [65.114]. OBTAINING INFORMATION

[Sections 855.115–855.200 [65.115–65.200] reserved for expansion]

## SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

Sec. 855.201 [65.201]. DIRECTOR

Sec. 855.202 [65.202]. LEGAL ADVISER

Sec. 855.203 [65.203]. MEDICAL BOARD

Sec. 855.204 [65.204]. OTHER PHYSICIANS

Sec. 855.205 [65.205]. ACTUARY

Sec. 855.206 [65.206]. OTHER EMPLOYEES

Sec. 855.207 [65.207]. COMPENSATION OF EMPLOYEES

Sec. 855.208 [65.208]. SURETY BOND

[Sections 855.209–855.300 [65.209–65.300] reserved for expansion]

## SUBCHAPTER D. MANAGEMENT OF ASSETS

Sec. 855.301 [65.301]. INVESTMENT OF ASSETS

- Sec. 855.302 [65.302]. RESTRICTIONS ON INVESTMENTS
  - Sec. 855.303 [65.303]. DUTY OF CARE
  - Sec. 855.304 [65.304]. CASH ON HAND
  - Sec. 855.305 [65.305]. CREDITING SYSTEM ASSETS
  - Sec. 855.306 [65.306]. EMPLOYEES SAVING FUND
  - Sec. 855.307 [65.307]. MUNICIPALITY ACCUMULATION FUND; CURRENT SERVICE
- Sec. 855.308 [65.308]. MUNICIPALITY ACCUMULATION FUND: PRIOR SERVICE
- Sec. 855.309 [65.309]. CURRENT SERVICE ANNUITY RESERVE FUND
  - Sec. 855.310 [65.310]. INTEREST FUND
  - Sec. 855.311 [65.311]. ENDOWMENT FUND
  - Sec. 855.312 [65.312]. EXPENSE FUND
- Sec. 855.313 [65.313]. SUPPLEMENTAL DISABILITY BENEFITS FUND
- Sec. 855.314 [65.314]. SUPPLEMENTAL DEATH BENEFITS FUND
  - Sec. 855.315 [65.315]. DISBURSEMENTS
  - Sec. 855.316 [65.316]. INTEREST RATES
- Sec. 855.317 [65.317]. TRANSFER OF ASSETS FROM INTEREST FUND
- Sec. 855.318 [65.318]. TRANSFER OF ASSETS ON MEMBER'S RETIREMENT OR RESTORATION TO ACTIVE DUTY
  - Sec. 855.319 [65.319]. PAYMENT TO FORMERLY PARTICIPATING MUNICIPALITY
- Sec. 855.320 [65.320]. ADJUSTING STOCKS' BOOK VALUE
- [Sections 855.321–855.400 [65.321–65.400] reserved for expansion]
- SUBCHAPTER E. COLLECTION OF CONTRIBUTIONS
  - Sec. 855.401 [65.401]. MEMBER CONTRIBUTIONS
  - Sec. 855.402 [65.402]. COLLECTION OF MEMBER CONTRIBUTIONS
  - Sec. 855.403 [65.403]. COLLECTION OF MUNICIPALITY CONTRIBUTIONS
  - Sec. 855.404 [65.404]. MUNICIPALITY EXPENSE CONTRIBUTION
  - Sec. 855.405 [65.405]. MUNICIPALITY NORMAL CONTRIBUTION
  - Sec. 855.406 [65.406]. MUNICIPALITY PRIOR SERVICE CONTRIBUTION
  - Sec. 855.407 [65.407]. LIMITATION ON MUNICIPALITY CONTRIBUTION RATES
  - Sec. 855.408 [65.408]. MUNICIPALITY SUPPLEMENTAL DEATH BENEFITS CONTRIBUTION
  - Sec. 855.409 [65.409]. WAR PERIOD CONTRIBUTIONS
  - Sec. 855.410 [65.410]. INTEREST ON LATE CONTRIBUTIONS
  - [Sections 855.411–855.500 [65.412–65.500] reserved for expansion]
- SUBCHAPTER F. OPTIONAL PROGRAMS
  - Sec. 855.501 [65.501]. INCREASED CURRENT SERVICE ANNUITIES
  - Sec. 855.502 [65.502]. SUPPLEMENTAL DEATH BENEFITS PROGRAM
  - [Sections 855.503–855.600 [65.503–65.600] reserved for expansion]
- SUBCHAPTER G. MISCELLANEOUS ADMINISTRATIVE PROCEDURES
  - Sec. 855.601 [65.601]. STATEMENT OF AMOUNT IN ACCOUNT

Sec. 855.602 [65.602]. INTEREST IN ASSETS

Sec. 855.603 [65.603]. FORFEITURE OF CONTRIBUTIONS

Sec. 855.604 [65.604]. MERGER

Sec. 855.605 [65.605]. PARTICIPATION OF MEMBERS OF FIRE DEPARTMENT

#### CHAPTER 855 [65]. ADMINISTRATION

##### SUBCHAPTER A. BOARD OF TRUSTEES

Sec. 855.001 [65.001]. COMPOSITION OF BOARD OF TRUSTEES. The board of trustees is composed of six trustees.

Sec. 855.002 [65.002]. APPOINTMENT. The governor, with the advice and consent of the senate, shall appoint three executive trustees and three employee trustees.

Sec. 855.003 [65.003]. ELIGIBILITY. (a) To be eligible to serve as an executive trustee a person must be a chief executive officer, chief finance officer, or other officer, executive, or department head of a participating municipality.

(b) To be eligible to serve as an employee trustee a person must be an employee of a participating municipality.

(c) Two or more trustees serving concurrently may not be employed by or serve the same municipality.

(d) A trustee is immediately disqualified from serving as a trustee if the trustee ceases to satisfy the requirements of this section.

Sec. 855.004 [65.004]. TERM OF OFFICE. (a) The trustees hold office for staggered terms of six years, with the terms of two trustees expiring February 1 of each odd-numbered year.

(b) The governor shall fill a vacancy in the office of a trustee for the unexpired term by appointing a successor from a participating municipality.

Sec. 855.005 [65.005]. OATH OF OFFICE. Before taking office as a trustee, a person shall present to the board of trustees a certified copy of an oath of office subscribed before the clerk of the municipality that the person serves.

Sec. 855.006 [65.006]. APPLICATION OF SUNSET ACT. The board of trustees of the Texas Municipal Retirement System is subject to the Texas Sunset Act, [(Chapter 325[, Government Code)], but is not abolished under that Act. The board shall be reviewed under that Act during the period in which state agencies abolished September 1, 1991, and every 12th year after that date are reviewed.

Sec. 855.007 [65.007]. MEETINGS. (a) The board of trustees shall hold regular meetings in March, June, September, and December of each year and special meetings when called by the director.

(b) Before the fifth day preceding the day of a meeting, the director shall give written notice of a special meeting to each trustee unless notice is waived.

(c) All meetings of the board must be open to the public.

(d) The board shall hold its meetings in the office of the board or in a place specified by the notice of the meeting.

Sec. 855.008 [65.008]. COMPENSATION; EXPENSES. Each trustee serves without compensation but is entitled to:

(1) reimbursement for reasonable traveling expenses incurred in attending board meetings; and

(2) payment of an amount equal to any compensation withheld by the trustee's employing municipality because of the trustee's attendance at board meetings.

Sec. 855.009 [65.009]. VOTING. (a) Each trustee is entitled to one vote.

(b) At any meeting of the board, four or more concurring votes are necessary for a decision or action by the board.

[Sections 855.010–855.100 [65.010–65.100] reserved for expansion]

#### SUBCHAPTER B. POWERS AND DUTIES OF BOARD OF TRUSTEES

Sec. 855.101 [65.101]. ADMINISTRATION. (a) The retirement system is a trust.

(b) The board of trustees is responsible for the administration of the retirement system.

Sec. 855.102 [65.102]. RULEMAKING. (a) The board of trustees shall adopt rules and perform reasonable activities it finds necessary or desirable for efficient administration of the system.

(b) The board may adopt and enforce rules concerning:

(1) the time that a municipality electing to participate in the system begins its participation; or

(2) notice, information, and reports required of municipalities electing to participate in the system.

Sec. 855.103 [65.103]. ADMINISTERING SYSTEM ASSETS. (a) The board of trustees may sell, assign, exchange, or trade and transfer any security in which the retirement system's assets are invested. The board may use or reinvest the proceeds as the board determines that the system's needs require.

(b) In handling the funds of the retirement system, the board of trustees has all powers and duties granted to the State Depository Board.

Sec. 855.104 [65.104]. ACCEPTING GIFT, GRANT, OR BEQUEST. The board of trustees shall accept a gift, grant, or bequest of money or securities:

(1) for the purpose designated by the grantor if the purpose provides an endowment or retirement benefits to some or all participating employees or annuitants of the retirement system; or

(2) if no purpose is designated, for deposit in the endowment fund.

Sec. 855.105 [65.105]. INDEBTEDNESS; PAYMENT. (a) The board of trustees may:

(1) incur indebtedness;

(2) on the credit of the retirement system, borrow money to pay expenses incident to the system's operation;

(3) renew, extend, or refund its indebtedness; or

(4) issue and sell negotiable promissory notes or negotiable bonds of the retirement system.

(b) A note or bond issued under this section must mature before the 20th anniversary of the issuance of the note or bond. The rate of interest on the note or bond may not exceed six percent a year.

(c) The board shall charge a note or bond issued under this section against the system's expense fund and shall pay the note or bond from that fund. The total indebtedness against the expense fund may not exceed \$75,000 at any time.

(d) A note or bond issued under this section must expressly state that the note or bond is not an obligation of this state.

Sec. 855.106 [65.106]. GRANTS AND PAYMENT OF BENEFITS. The board of trustees, in accordance with this subtitle, shall consider all applications for annuities and benefits and shall decide whether to grant the annuities and benefits. The board may suspend one or more payments in accordance with this subtitle.

Sec. 855.107 [65.107]. AUDIT. Annually, or more often, the board of trustees shall have the accounts of the retirement system audited by a certified public accountant.

Sec. 855.108 [65.108]. DESIGNATION OF AUTHORITY TO SIGN VOUCHERS. The board of trustees by resolution shall designate one or more representatives who have authority to sign vouchers for payments from the assets of the retirement system.

Sec. 855.109 [65.109]. DEPOSITORIES. The board of trustees shall designate financial institutions to qualify and serve the retirement system as depositories in accordance with *Subchapter C of Chapter 404* [Article 2525, et seq., Revised Civil Statutes of Texas, 1925, as amended].

Sec. 855.110 [65.110]. ADOPTING RATES AND TABLES. (a) The board of trustees shall adopt rates and tables that the board considers necessary for the retirement system after considering the results of the actuary's investigation of the mortality and service experience of the system's members and annuitants.

(b) Based on recommendations of the actuary, the board of trustees shall adopt rates and tables necessary to determine the supplemental death benefits contribution rates for each municipality participating in the supplemental death benefits fund.

Sec. 855.111 [65.111]. CERTIFICATION OF RATES. (a) The board of trustees shall certify all current service contribution rates, all prior service contribution rates, and the current interest rate computed in accordance with Section 855.316(c) [65.316(c) of this subtitle] and approved in writing by the actuary.

(b) The board shall notify each participating municipality of the rates certified in accordance with this section.

Sec. 855.112 [65.112]. RECORDS OF BOARD OF TRUSTEES. (a) The board of trustees shall keep, in convenient form, data necessary for required computations and valuations by the actuary.

(b) The board shall keep a permanent record of all of its proceedings.

(c) Records of the board are open to the public.

Sec. 855.113 [65.113]. OFFICE. (a) The board of trustees shall establish an office in Austin or in one of the participating municipalities.

(b) The board shall keep the books and records of the retirement system in that office.

Sec. 855.114 [65.114]. OBTAINING INFORMATION. The board of trustees shall obtain from members or participating municipalities information necessary for the proper operation of the retirement system.

[Sections 855.115–855.200 [65.115–65.200] reserved for expansion]

#### SUBCHAPTER C. OFFICERS AND EMPLOYEES OF BOARD OF TRUSTEES

Sec. 855.201 [65.201]. DIRECTOR. (a) The board of trustees shall appoint a director.

(b) The director shall:

(1) manage and administer the retirement system under the supervision and direction of the board; and

(2) invest the assets of the system.

(c) The board of trustees may delegate to the director powers and duties in addition to those stated by Subsection (b) [of this section].

(d) The director annually shall:

(1) prepare an itemized budget showing the amount required to pay the retirement system's expenses for the following fiscal year; and

(2) submit the report to the board for review, amendment, and adoption.

Sec. 855.202 [65.202]. LEGAL ADVISER. (a) The board of trustees shall appoint an attorney.

(b) The attorney shall act as the legal adviser to the board and shall represent the system in all litigation.

Sec. 855.203 [65.203]. **MEDICAL BOARD.** (a) The board of trustees shall designate a medical board composed of three physicians.

(b) To be eligible to serve as a member of the medical board, a physician must be licensed to practice medicine in the state and be of good standing in the medical profession. A physician who is eligible to participate in the retirement system may not be a member of the medical board.

(c) The medical board shall:

(1) review all medical examinations required by this subtitle;

(2) investigate essential statements and certificates made by or on behalf of a member of the retirement system in connection with an application for disability retirement; and

(3) report in writing to the board of trustees its conclusions and recommendations on all matters referred to it.

Sec. 855.204 [65.204]. **OTHER PHYSICIANS.** The board of trustees may employ physicians in addition to the medical board to report on special cases.

Sec. 855.205 [65.205]. **ACTUARY.** (a) The board of trustees shall appoint an actuary.

(b) The actuary shall perform duties in connection with advising the board concerning operation of the retirement system's funds.

(c) At least once every five years the actuary shall:

(1) make a general investigation of the mortality and service experience of the members and annuitants of the retirement system; and

(2) on the basis of the results of the investigation, recommend for adoption by the board tables and rates that are required.

(d) On the basis of rates and tables adopted by the board, the actuary shall:

(1) annually compute the normal contribution rate for each participating municipality;

(2) annually compute the prior service contribution rate for each participating municipality;

(3) compute the current interest rate in accordance with Section 855.316(c) [65.316(c) of this subtitle];

(4) compute the supplemental death benefits rate and the supplemental disability benefits rate for each participating municipality;

(5) certify the amount of each annuity and benefit granted by the board; and

(6) make an annual valuation of the assets and liabilities of the funds of the retirement system.

Sec. 855.206 [65.206]. **OTHER EMPLOYEES.** The board of trustees shall employ actuarial, clerical, legal, medical, and other assistants required for the efficient administration of the retirement system.

Sec. 855.207 [65.207]. **COMPENSATION OF EMPLOYEES.** The board of trustees shall determine the amount of compensation that employees of the retirement system receive.

Sec. 855.208 [65.208]. **SURETY BOND.** (a) The board of trustees shall require a surety bond for the director. The board shall determine the amount of a bond that is required.

(b) A bond must be conditioned on the director's faithful performance of the duties of the director's office.

(c) The board shall secure a required bond and shall pay for the bond from the retirement system's assets.

[Sections 855.209–855.300 ~~[65.209–65.300]~~ reserved for expansion]

#### SUBCHAPTER D. MANAGEMENT OF ASSETS

Sec. 855.301 ~~[65.301]~~. INVESTMENT OF ASSETS. The board of trustees shall invest and reinvest the assets of the retirement system without distinction as to their source in:

- (1) interest-bearing bonds or other evidences of indebtedness of this state, a county, school district, city, or other municipal corporation of this state, the United States, or an authority or agency of the United States;
- (2) securities on which the United States or any authority or agency of the United States guarantees the payment of principal and interest;
- (3) corporate bonds or debentures that are issued by a company:
  - (A) incorporated in the United States and that are ~~rated~~ ~~[rate]~~ "A" or better by one or more nationally recognized rating agencies approved by the board; or
  - (B) in whose stock the retirement system may invest as provided by Subdivision (4) ~~[of this subsection]~~;
- (4) common or preferred stocks of a company incorporated in the United States that has paid cash dividends on its stock for 10 consecutive years immediately before the date of purchase and, unless the stocks are bank or insurance stocks, that is listed on an exchange registered with the Securities and Exchange Commission or its successor; or
- (5) obligations issued, assumed, or guaranteed by the African Development Bank.

Sec. 855.302 ~~[65.302]~~. RESTRICTIONS ON INVESTMENTS. (a) The board may not invest more than two percent of the total assets of the retirement system in the stocks, bonds, or debentures of one corporation.

(b) The system may not own more than five percent of the voting stock of one corporation.

Sec. 855.303 ~~[65.303]~~. DUTY OF CARE. In making investments for the retirement system, the board of trustees shall exercise the judgment and care, under the circumstances, that persons of prudence, discretion, and intelligence exercise in the management of their own affairs, considering the probable income from the securities and probable safety of their capital.

Sec. 855.304 ~~[65.304]~~. CASH ON HAND. The board of trustees shall determine the amount of cash on hand required to pay benefits and the expenses of the retirement system.

Sec. 855.305 ~~[65.305]~~. CREDITING SYSTEM ASSETS. (a) The retirement system shall immediately deposit all money received by the system with a depository designated under Section 855.109 ~~[65.109 of this subtitle]~~.

(b) When securities of the retirement system are received, the system shall deposit the securities in trust with a depository designated under Section 855.109 ~~[65.109 of this subtitle]~~. The depository shall provide adequate safe deposit facilities for the preservation of the securities.

(c) All assets of the retirement system shall be credited, according to the purpose for which they are held, to one of the following funds:

- (1) employees saving fund;
- (2) municipality accumulation fund;
- (3) current service annuity reserve fund;
- (4) interest fund;
- (5) endowment fund;
- (6) expense fund;
- (7) supplemental disability benefits fund; or
- (8) supplemental death benefits fund.

Sec. ~~855.306~~ [65.306]. EMPLOYEES SAVING FUND. (a) The retirement system shall deposit in a member's individual account in the employees saving fund:

(1) the amount of contributions to the retirement system deducted from the member's compensation;

(2) interest allowed on money in the account in accordance with this subtitle;

(3) an amount deposited by the member in accordance with Section ~~855.409~~ [65.410 of this subtitle] to establish credited service during a time of war;

(4) the portion of a deposit required by Section ~~853.003~~ [63.003 of this subtitle] to reinstate credited service previously canceled that represents the amount withdrawn; and

(5) an amount deposited by the member in accordance with Section ~~853.502~~ [63.502 of this subtitle] to establish credited service for military service.

(b) On December 31 of each year the retirement system shall credit to each member's individual account interest as allowed by this subtitle on the amount of accumulated contributions credited to the member's account on January 1 of that year.

(c) The retirement system may not pay interest on money in a person's individual account:

(1) for a part of a year; or

(2) after the person's membership has been terminated in accordance with Section ~~852.104~~ [62.104 of this subtitle] because of absence from service.

Sec. ~~855.307~~ [65.307]. MUNICIPALITY ACCUMULATION FUND: CURRENT SERVICE. (a) The retirement system shall deposit in the account of a participating municipality in the municipality accumulation fund:

(1) all current service contributions made by the municipality to the retirement system;

(2) interest allowed as provided by this subtitle on money in the fund;

(3) amounts deposited by the municipality in accordance with Section ~~855.409~~ [65.410 of this subtitle] to establish credited service during a time of war;

(4) the withdrawal charge for reinstatement of credited service as provided by Section ~~853.003~~ [63.003 of this subtitle]; and

(5) amounts deposited by the municipality in accordance with Section ~~853.502~~ [63.502 of this subtitle] to establish credited service for military service.

(b) The retirement system shall pay from the account of a participating municipality in the municipality accumulation fund:

(1) money to the current service annuity reserve fund in accordance with Section ~~855.318~~ [65.318 of this subtitle]; and

(2) refunds to certain municipalities in accordance with Section ~~855.319~~ [65.319 of this subtitle].

(c) If credited service previously canceled is reinstated in accordance with Section ~~853.003~~ [63.003 of this subtitle], the retirement system shall charge the municipality's account in the municipality accumulation fund with the necessary reserves to fund the credits based on current service that are restored to the member.

Sec. ~~855.308~~ [65.308]. MUNICIPALITY ACCUMULATION FUND: PRIOR SERVICE. (a) In addition to amounts deposited as provided by Section ~~855.307~~ [65.307 of this subtitle], the retirement system shall deposit in the account of a participating municipality in the municipality accumulation fund all prior service contributions made by the municipality to the retirement system.

(b) In addition to amounts paid as provided by Section ~~855.307~~ [65.307 of this subtitle], the retirement system shall pay from the account of a participating municipality in the municipality accumulation fund:



(1) all payments under annuities arising from prior service credits, special prior service credits, antecedent service credits, or updated service credits authorized by a participating municipality; and

(2) optional increased payments authorized by a participating municipality under Section ~~854.203~~ [64.203 of this subtitle].

(c) The retirement system shall charge municipal liabilities from updated service credits against the account of the municipality that authorized the credits.

(d) If credited service previously canceled is reinstated in accordance with Section ~~853.003~~ [63.003 of this subtitle], the retirement system shall charge the municipality's account in the municipality accumulation fund with the necessary reserves to fund credits based on prior service that are restored to the member.

(e) The retirement system shall charge reserves required to fund optional benefit increases authorized under Section ~~854.203~~ [64.203 of this subtitle] against the account of the municipality allowing the increases.

(f) The board of trustees may proportionately reduce all payments under annuities payable under this section, at any time and for a period necessary, to prevent those payments for a year from exceeding the amount available in the participating municipality's account.

Sec. ~~855.309~~ [65.309]. CURRENT SERVICE ANNUITY RESERVE FUND. (a) The retirement system shall deposit and hold in the current service annuity reserve fund all reserves for current service annuities and all benefits in lieu of current service annuities.

(b) The retirement system shall pay from the current service annuity reserve fund annuities and benefits described by Subsection (a) [of this section].

Sec. ~~855.310~~ [65.310]. INTEREST FUND. (a) The retirement system shall deposit in the interest fund all income, interest, and dividends from deposits and investments authorized by this chapter. The system shall credit the amount of an adjustment made in accordance with Section ~~855.320~~ [65.320 of this subtitle] to the interest fund.

(b) On December 31 of each year, the retirement system shall transfer money from the interest fund in accordance with Section ~~855.317~~ [65.317 of this subtitle].

Sec. ~~855.311~~ [65.311]. ENDOWMENT FUND. (a) The retirement system shall deposit in the endowment fund gifts, awards, funds, and assets delivered to the retirement system that are not specifically required by the system's other funds.

(b) The endowment fund consists of:

- (1) the interest reserve account;
- (2) the general reserves account;
- (3) the distributive benefits account;
- (4) the perpetual endowment account; and
- (5) other special accounts that the board of trustees by resolution establishes.

(c) The retirement system shall credit to the interest reserve account, general reserves account, and distributive benefits account interest in accordance with Section ~~855.317~~ [65.317 of this subtitle].

(d) The board of trustees shall transfer money from the interest reserve account to the expense fund in accordance with Section ~~855.312~~ [65.312 of this subtitle].

(e) If the board of trustees determines that the amount credited to the distributive benefits account on December 31 of any year is sufficient to do so, the board by resolution may:

- (1) authorize the distribution and payment of all or part of the money credited to the account to persons who were annuitants on that day in the ratio of the rate of the monthly benefit of each annuitant to the total of all annuity payments made by the system for the final month of the year; or
- (2) authorize the distribution of all or part of the amount credited to the account to:

(A) each member's individual account in the employees saving fund as supplemental interest in the ratio of the amount of current interest paid on the individual's account to the current interest paid to all individual accounts for the year; and

(B) each participating municipality's account in the municipality accumulation fund as supplemental interest in the ratio of the current interest allowed on the account of the municipality to the total current interest paid to all municipalities' accounts for the year.

(f) The retirement system shall deposit and hold in the perpetual endowment account:

(1) funds, gifts, and awards that the grantors designate as perpetual endowments for the retirement system; and

(2) money forfeited to the retirement system as provided by Section 855.603 [65.603 of this subtitle].

Sec. 855.312 [65.312]. EXPENSE FUND. (a) The board of trustees shall deposit in the expense fund municipality contributions for expenses of the retirement system paid in accordance with Section 855.404 [65.404 of this subtitle].

(b) The board of trustees by resolution recorded in its minutes shall transfer from the interest reserve account of the endowment fund to the expense fund the amount that exceeds the amount needed to provide adequate reserves against insufficient earnings on investments and against special and contingency requirements of other funds of the system and that is needed to pay the system's estimated expenses for the fiscal year.

(c) The retirement system shall pay from the expense fund:

(1) administrative and maintenance expenses of the system; and

(2) notes and bonds issued in accordance with Section 855.105 [65.105 of this subtitle].

(d) If the amount of the system's estimated expenses exceeds the amount in the interest reserve account of the endowment fund available for administrative expenses, the board of trustees, by a resolution recorded in its minutes, shall assess an amount equal to the difference against each participating municipality in proportion to the number of its members in the retirement system. The board shall collect the assessments and deposit the amount collected in the expense fund.

Sec. 855.313 [65.313]. SUPPLEMENTAL DISABILITY BENEFITS FUND. (a) The retirement system shall deposit in the supplemental disability benefits fund contributions made to provide supplemental disability benefits in accordance with previous law [Section 65.408 of this subtitle]. The retirement system may not establish separate accounts in the fund for municipalities participating in the fund but shall credit contributions to a single account.

(b) The retirement system shall pay supplemental disability benefits only from money in the supplemental disability benefits fund, and the benefits are not an obligation of other funds of the system.

(c) The beginning date of participation of each municipality participating in the supplemental disability benefits fund is that determined by the board of trustees. Participation terminates January 1, 1988.

(d) As soon as practicable after December 31, 1988, the actuary shall calculate the amount of reserves required to pay all annuities that are obligations of the supplemental disability benefits fund. If the board of trustees determines, on the basis of the calculations made by the actuary, that the money to the credit of the fund is materially in excess of the amount of reserves needed to assure payment of all annuities that are obligations of the fund, the board may direct that a portion of the excess shall be transferred from the supplemental disability benefits fund to the municipality accumulation fund and credited to the respective accounts of the participating municipalities in such proportions as the board of trustees determines to be the ratio of their respective contributions to the total of all contributions to the supplemental disability benefits fund. When all annuities payable from the supplemental disability benefits fund have been finally paid and discharged, the board of trustees shall direct that the money remaining in the supplemental disability benefits fund shall be transferred and credited to the accounts of the respective participating municipalities in the municipality accumulation fund in

proportion to the same ratios of their contributions to the total of all contributions to the supplemental disability benefits fund.

Sec. 855.314 [65.314]. SUPPLEMENTAL DEATH BENEFITS FUND. (a) The retirement system shall deposit in the supplemental death benefits fund contributions paid by municipalities to the retirement system to provide supplemental death benefits in accordance with Section 855.408 [65.409 ~~of this subtitle~~]. The retirement system may not establish separate accounts in the fund for municipalities participating in the fund but shall credit contributions to a single account.

(b) The retirement system shall pay supplemental death benefits only from money in the supplemental death benefits fund, and the benefits are not an obligation of other funds of the system.

(c) The supplemental death benefits fund may become operative only after a sufficient number of municipalities elect to participate in the fund so that 4,000 members or more are covered by the fund.

(d) The board of trustees shall determine the operative date of the fund.

(e) The effective participation date of a municipality is:

(1) the operative date of the fund if the municipality elected to participate in the fund on or before the fund's operative date; or

(2) the first day of any calendar month after the month in which the municipality notifies the board of its election to enter the fund.

(f) The board of trustees shall notify each municipality of its effective participation date.

Sec. 855.315 [65.315]. DISBURSEMENTS. (a) Disbursements from the assets of the retirement system may be made only on vouchers signed by the person designated for that purpose in accordance with Section 855.108 [65.108 ~~of this subtitle~~].

(b) A person designated to sign vouchers may draw checks or warrants only on proper authorization from the board of trustees recorded in the official minutes of the board.

(c) When a voucher is properly signed, a depository with which assets of the system are deposited shall accept and pay the voucher. The depository is released from liability for payment made on the voucher.

Sec. 855.316 [65.316]. INTEREST RATES. (a) Unless this subtitle expressly states that interest is computed using the current interest rate or another specified rate of interest, interest is computed using the rate of:

(1) 2½ percent a year compounded annually for periods before January 1, 1970;

(2) 3 percent a year compounded annually for periods after December 31, 1969, and before January 1, 1977;

(3) 4 percent a year compounded annually for periods after December 31, 1976, and before January 1, 1982; and

(4) 5 percent a year compounded annually for periods after December 31, 1981.

(b) The current interest rate is the lesser of:

(1) the interest rate prescribed by Subsection (a) [of this section]; or

(2) the interest rate computed by:

(A) adding to the amount in the municipality accumulation fund on January 1 of the year for which the computation is made the sum of the accumulated contributions in the employees saving fund on January 1 of the year of all persons who are members on December 31 of the year, before any transfers for retirements effective December 31 of the year are made, and the amount in the endowment fund, after transfer of money to the expense fund, on January 1 of the year; and

(B) dividing the amount in the interest fund on December 31 of that year after the transfer of interest to the current service annuity reserve fund, municipality accumulation fund, supplemental disability benefits fund, and supplemental death benefits fund, by the amount computed under Paragraph (A) [of this subdivision].

Sec. ~~855.317~~ [65.317]. TRANSFER OF ASSETS FROM INTEREST FUND. (a) On December 31 of each year, the board of trustees shall transfer from the interest fund the following amounts:

- (1) to the current service annuity reserve fund, interest on the mean amount in the current service annuity reserve fund during that year;
- (2) to the supplemental disability benefits fund, interest on the mean amount in the supplemental disability benefits fund during that year;
- (3) to the supplemental death benefits fund, interest on the mean amount in the supplemental death benefits fund during that year;
- (4) to the municipality accumulation fund, current interest on the amount in the municipality accumulation fund on January 1 of that year;
- (5) to the interest reserve account of the endowment fund, current interest on the amount in the endowment fund on January 1 of that year; and
- (6) to the employees saving fund, current interest on the sum of the accumulated contributions in the employees saving fund credited on January 1 of that year to all persons who are members on December 31 of that year before any transfers for retirement effective December 31 of that year are made.

(b) The board of trustees shall transfer to the interest reserve account of the endowment fund the portion of the amount remaining in the interest fund after the transfers required by Subsection (a) [~~of this section~~] are made that the board determines is necessary:

- (1) to provide adequate reserves against insufficient future earnings on investments to allow interest on the retirement system's funds;
  - (2) to provide adequate reserves against special and contingency requirements of other funds of the system; and
  - (3) to provide the amount required for the administration expenses of the system for the following year.
- (c) After the requirements of the interest reserve account of the endowment fund have been satisfied, the board of trustees may transfer any of the amount remaining in the interest fund to the general reserves account of the endowment fund to maintain adequate reserves against special requirements of other funds of the retirement system.
- (d) After the requirements of the interest reserve account and the general reserves account of the endowment fund have been satisfied, the board of trustees shall transfer any amount remaining in the interest fund to the distributive benefits account of the endowment fund.

Sec. ~~855.318~~ [65.318]. TRANSFER OF ASSETS ON MEMBER'S RETIREMENT OR RESTORATION TO ACTIVE DUTY. (a) When a member retires, the retirement system shall transfer:

- (1) from the employees saving fund to the current service annuity reserve fund, the member's accumulated contributions; and
  - (2) from the municipality accumulation fund account of the municipality employing the retiring member to the current service annuity reserve fund, an amount equal to the amount of the member's accumulated contributions in the employees saving fund or a greater amount that a participating municipality has agreed to provide as reserves for an additional current service annuity for the member.
- (b) If the retiring member's accumulated contributions are the result of service for more than one participating municipality, the retirement system shall transfer from the account of each municipality the amount chargeable to that municipality for the member.
- (c) If a retiree resumes employment under Section ~~854.308~~ [64.307 ~~of this subtitle~~], the board of trustees shall transfer the balance of the person's retirement reserve from the current service annuity reserve fund to the employees saving fund and to the municipality accumulation fund in proportion to the original amount transferred to the current service annuity reserve fund from those funds.

Sec. 855.319 [65.319]. PAYMENT TO FORMERLY PARTICIPATING MUNICIPALITY. If a participating municipality has no employees who are members of the retirement system and has no present or potential liabilities resulting from the participation of former employees, the municipality's participation in the system stops and the system shall repay to the municipality on application any amount in the municipality accumulation fund that is credited to the municipality.

Sec. 855.320 [65.320]. ADJUSTING STOCKS' BOOK VALUE. If the board of trustees determines that on December 31 of a year the aggregate market value of common stocks held by the retirement system plus the amount credited to the interest reserve account of the endowment fund exceeds the sum of 120 percent of the book value of the stocks plus 2 percent of the book value of all other invested assets of the system, the board may direct that all or a part of the excess may be capitalized and applied to adjust the book value of the stock upward in accordance with rules adopted by the board. The board shall treat the amount of the adjustment as investment income and shall credit the amount to the interest fund.

[Sections 855.321–855.400 [65.321–65.400] reserved for expansion]

#### SUBCHAPTER E. COLLECTION OF CONTRIBUTIONS

Sec. 855.401 [65.401]. MEMBER CONTRIBUTIONS. (a) Each municipality that has one or more departments participating in the retirement system by ordinance shall designate the rate of member contributions for employees of a participating department. The municipality shall elect a rate of three, five, six, or seven percent of the employees' compensation. Different departments of a municipality may have different rates of member contributions.

(b) A participating municipality by ordinance may increase the rate of member contributions.

(c) A participating municipality may reduce the rate of member contributions if:

(1) at an election by secret ballot conducted under rules adopted by the board of trustees, the proposal to reduce the rate is passed by an affirmative vote of two-thirds of all members employed by the municipality; and

(2) the municipality by ordinance provides for the reduction.

(d) A reduction in a member contribution rate may become effective only on the first day of a calendar month. The effective date of the reduction must be after the 90th day after the day on which the election required by Subsection (c) [of this section] is held or the day on which the ordinance required by Subsection (c) [of this section] is adopted, whichever is later. The municipality shall give written notice of a reduction in the deposit rate to the director before the 60th day preceding the effective date of the reduction.

Sec. 855.402 [65.402]. COLLECTION OF MEMBER CONTRIBUTIONS. (a) Each payroll period each participating municipality shall cause the contribution for the period to be deducted from the compensation of each member that it employs.

(b) In determining the amount of a member's compensation for a payroll period, the board of trustees may use the rate of annual compensation payable to a member on the first day of the payroll period as the rate for the entire period and may omit deductions from compensation for less than a full payroll period if the employee was not a member on the first day of the period.

(c) The board of trustees may modify a member's required deduction by an amount that does not exceed one-tenth of one percent of the annual compensation on which the deduction is made.

(d) A participating municipality shall certify to the board of trustees on each payroll, or in another manner prescribed by the board, the amount to be deducted from the compensation of each member that it employs.

(e) The treasurer or disbursing officer of each participating municipality shall:

(1) make deductions from each member's compensation for contributions to the retirement system;

(2) transmit monthly, or at the time designated by the board of trustees, a certified copy of the payroll; and

(3) pay the deductions in cash to the board of trustees at the board's home office before the 16th day of the month following that for which the deductions are required to be made.

(f) To facilitate the collection of member contributions, the city clerk or city secretary of each participating municipality, before January 31 of each year, shall file with the director a certified list that states the name and monthly and annual salaries of each employee of the municipality who is a member of the retirement system. Any addition to or deletion from the list must be certified.

(g) After the deductions for member contributions are paid, the board of trustees shall:

(1) record all receipts; and

(2) deposit the receipts to the credit of the employees saving fund.

(h) The treasurer or disbursing officer of a participating municipality shall make the deductions required by this section even if the member's compensation is reduced below the amount equal to the minimum compensation provided by law.

(i) By becoming a member of the retirement system, a member consents to the deductions required by this section. The payment of compensation less those deductions is a complete release of all claims, except benefits provided by this subtitle, for services rendered by the member during the payroll period.

(j) Each participating municipality shall pick up the employee contributions required by Section 855.401 [65.401] and this section for all compensation earned after December 31, 1983, and shall pay these picked-up employee contributions from the same source of funds ~~[which is]~~ used in paying earnings to the employee. The participating municipality may pick up these contributions by a reduction in the cash salary of the employee or by an offset against a future salary increase or by a combination of a reduction in salary and offset against a future salary increase; unless it is otherwise determined by the governing body of the participating municipality, the pick-up shall be accomplished by a corresponding reduction in the cash salary of the employee.

(k) Contributions picked up as ~~[herein]~~ provided by Subsection (j) shall be treated as employer contributions in determining tax treatment of the amounts under the United States Internal Revenue Code; however, each participating municipality shall continue to withhold federal income taxes based upon these contributions until the Internal Revenue Service determines or the federal courts rule that pursuant to Section 414(h) of the ~~[United States]~~ Internal Revenue Code of 1986 (26 U.S.C. Section 414), these picked-up contributions ~~are~~ ~~[shall]~~ not ~~[be]~~ included as gross income of the employee until such time as they are distributed or made available. Employee contributions that are picked up as above provided shall be deposited to the individual account of the member and shall ~~[thereupon]~~ be treated for all other purposes of this subtitle in the same manner and with like effect as if the amount had been deducted from the compensation of the employee pursuant to Sections 855.401 and 855.402(a) ~~[the provisions of Section 65.401 and Subsections (a)]~~ through (h) ~~[of Section 65.402]~~; and picked-up contributions ~~may~~ ~~[shall]~~ not be included in calculating the limitation on municipality contribution rates prescribed by Section 855.407 [65.407] or other provisions of this subtitle.

Sec. 855.403 [65.403]. COLLECTION OF MUNICIPALITY CONTRIBUTIONS. (a) Before the 16th day of each month, each participating municipality shall pay or cause to be paid to the retirement system at the system's office expense contributions in accordance with Section 855.404 ~~[65.404 of this subtitle]~~, current service contributions in accordance with Section 855.405 ~~[65.405 of this subtitle]~~, and prior service contributions in accordance with Section 855.406 ~~[65.406 of this subtitle]~~.

(b) Unless otherwise provided for and paid by a municipality, a municipality shall pay its contributions to the retirement system from:

(1) the fund from which earnings are paid to members; or

(2) the general fund of the municipality.

Sec. 855.404 [65.404]. MUNICIPALITY EXPENSE CONTRIBUTION. (a) Each participating municipality shall pay to the retirement system an expense contribution prescribed in accordance with this section.

(b) The board of trustees, before January 1 of each year, shall set the rate of the contribution necessary to provide an amount required to pay the difference between:

(1) the estimated administrative expenses for the following year; and

(2) the anticipated revenue, from sources other than municipality contributions, to be used for the expenses of the year as adjusted for a surplus or deficiency existing on January 1 of that year.

(c) The rate set by the board of trustees under Subsection (b) [of this section] may not exceed 50 cents a month for each member.

(d) The board of trustees shall certify the rate set under Subsection (b) [of this section] to each participating municipality before January 1 of the year for which the rate is set.

Sec. 855.405 [65.405]. MUNICIPALITY NORMAL CONTRIBUTION. Each participating municipality shall pay to the municipality accumulation fund, as its normal contribution, an amount equal to a percentage of the compensation of members employed by the municipality for that month. The rate of contribution is the normal contribution rate determined annually by the actuary and approved by the board of trustees.

Sec. 855.406 [65.406]. MUNICIPALITY PRIOR SERVICE CONTRIBUTION. (a) Each participating municipality shall pay to the municipality accumulation fund, as its prior service contribution, an amount equal to a percentage of the compensation of members employed by the municipality for that month.

(b) The rate of contribution is the rate determined annually by the actuary and approved by the board of trustees as being the rate required to fund all obligations charged against the municipality's account in the municipality accumulation fund within the municipality's amortization period without resulting in a probable future depletion of that account.

Sec. 855.407 [65.407]. LIMITATION ON MUNICIPALITY CONTRIBUTION RATES.

(a) The combined rates of a municipality's normal contributions and prior service contributions may not exceed:

(1) 9½ percent of the total compensation paid by the municipality to the employees of its participating departments if the rate of member contributions of the employees of its participating departments is 7 percent of their compensation;

(2) 7½ percent of the total compensation paid by the municipality to the employees of its participating departments if the rate of member contributions of the employees of its participating departments is 5 percent of their compensation; or

(3) 5½ percent of the total compensation paid by the municipality to the employees of its participating departments if the rate of member contributions of the employees of its participating departments is 3 percent of their compensation.

(b) The actuary annually shall determine the municipality normal contribution rate and the prior service contribution rate from the most recent data available at the time of the determination. Before January 1 of each year, the board of trustees shall certify the rates to each participating municipality. If a participating municipality has different rates of contribution for employees of different departments, the actuary shall determine the maximum rate for the municipality using the average rate of contribution prescribed for contributions of employees of its participating departments. To compute the average rate the actuary shall consider the number of employees in each participating department of the municipality.

(c) A reduction in the member contribution rate for employees of a participating municipality does not reduce the maximum rate of contribution of the municipality.

(d) If the dates of participation of each department of a municipality are not the same, the governing body of the municipality may request that, to determine the municipality normal contribution rate and prior service contribution rate and to determine the period

during which the municipality must fund the obligations charged against its account in the municipality accumulation fund, all of its departments have a single composite participation date. The actuary shall determine the composite participation date by computing an average weighted according to the number of members entering the retirement system on the actual dates of participation of the departments involved.

(e) If the combined rates of a municipality's normal contributions and prior service contributions exceed the rate prescribed by Subsection (a) ~~[of this section]~~, the rate for prior service contributions shall be reduced to the rate that equals the difference between the maximum rate prescribed by Subsection (a) ~~[of this section]~~ and the normal contribution rate for the municipality.

Sec. 855.408 ~~[65.409]~~. MUNICIPALITY SUPPLEMENTAL DEATH BENEFITS CONTRIBUTION. (a) In addition to other contributions to the retirement system required by this subtitle, each municipality participating in the supplemental death benefits fund monthly shall pay to the supplemental death benefits fund an amount equal to the rate of contribution computed in accordance with Section 855.502 ~~[65.502 of this subtitle]~~, multiplied by the total compensation for the month of the members employed by the municipality.

(b) The limitation of Section 855.407(e) ~~[65.407(e) of this subtitle]~~ does not apply to the rate of the contribution to the supplemental death benefits fund.

Sec. 855.409 ~~[65.410]~~. WAR PERIOD CONTRIBUTIONS. (a) During a period that the United States is at war and until the first anniversary of the last day of the war, a member who as a result of conscription or volunteering is serving in the United States armed forces, armed forces reserve, an auxiliary of the armed forces or reserves, or the American Red Cross or who as a result of conscription by the government is in war work may pay, each year, to the retirement system an amount that does not exceed the amount of the member's contribution to the system during the last year that the member was employed by a participating municipality.

(b) The board of trustees shall treat the amounts paid to the system under this section in the same manner as funds deposited by the member while an employee of a participating municipality.

Sec. 855.410 ~~[65.411]~~. INTEREST ON LATE CONTRIBUTIONS. (a) A participating municipality that fails to remit before the 16th day of the month all contributions required by this subchapter to be made and remitted to the retirement system by that date shall pay to the retirement system, in addition to the contributions, interest on the past-due amounts at an annual rate that is the total of the rates of interest credited by the retirement system to accounts in the municipality accumulation fund for the preceding calendar year, plus two percent. The retirement system shall notify participating municipalities of the rate of interest that will be due on late payments.

(b) Payment is considered timely made if transmitted by first-class United States mail, postage prepaid, and postmarked not later than the 15th day of the month in which the payment is due.

[Sections 855.411–855.500 ~~[65.412–65.500]~~ reserved for expansion]

#### SUBCHAPTER F. OPTIONAL PROGRAMS

Sec. 855.501 ~~[65.501]~~. INCREASED CURRENT SERVICE ANNUITIES. (a) A participating municipality may elect to provide for an increased current service annuity reserve on the retirement of each of its employees who are members.

(b) The governing body of a municipality electing to provide for increased reserves by ordinance shall provide that for each month of current service rendered by a participating employee of the municipality after the date of its election the municipality will provide a contribution as provided by Subsection (c) ~~[of this section]~~ equal to 150 or 200 percent of the member's accumulated contribution to the retirement system for that month.

(c) On the retirement of a member covered by an increased current service annuity reserve, the retirement system shall transfer to the current service annuity reserve fund:



(1) accumulated contributions credited to the member's account in the employees saving fund; and

(2) the amount from the municipality's account in the municipality accumulation fund that the municipality has adopted under Subsection (b) ~~[of this section]~~.

(d) If the retiring member's accumulated contributions are the result of service for more than one participating municipality, the retirement system shall transfer from the account of each municipality the amount chargeable to that municipality for the member.

(e) A participating municipality electing to provide an increased current service annuity reserve and electing a contribution rate of 150 percent for a year is liable for total contributions at a rate that does not exceed a rate equal to the maximum rate prescribed for the municipality by Section 855.407, ~~[65.407 of this subtitle]~~ plus two percent a year. A municipality electing a rate of 200 percent a year is liable for contributions at a rate that does not exceed a rate equal to the maximum rate prescribed for the municipality by Section 855.407, ~~[65.407 of this subtitle]~~ plus four percent a year.

(f) Except as provided by Subsection (g) ~~[of this section]~~, an increased rate of contribution authorized under this section may become effective only on January 1 of a calendar year.

(g) A municipality that begins participation in the retirement system after December 31, 1975, may elect to provide for an increased current service annuity reserve beginning on its effective date of participation. That election remains in effect until the municipality elects to pay contributions at another rate.

(h) A municipality electing to provide for an increased current service annuity reserve may reduce its rate of contribution to 150 percent of the member contributions or to a rate equal to the member contributions. The reduction becomes effective on January 1 of the calendar year following the date on which the municipality's governing body adopts an ordinance reducing the rate of contribution.

Sec. 855.502 ~~[65.502]~~. SUPPLEMENTAL DEATH BENEFITS PROGRAM. (a) As soon as practical after the supplemental death benefits program is established and at the time of each investigation of members' mortality and service experience required by Section 855.110 ~~[65.110 of this subtitle]~~, the actuary shall investigate the mortality experience of the members and eligible annuitants participating in the supplemental death benefits program. On the basis of the result of that investigation, the actuary shall recommend to the board of trustees rates and tables necessary to determine supplemental death benefits contribution rates. The rates and tables may provide for the anticipated mortality experience of the persons covered under the supplemental death benefits fund and for a contingency reserve.

(b) Before a municipality's participation date in the supplemental death benefits fund and before January 1 of each subsequent year, the actuary shall compute, on the basis of rates and tables adopted by the board of trustees, the supplemental death benefits contribution rate of a municipality participating in the supplemental death benefits contribution fund. The rate must be expressed as a percentage of the compensation of members employed by the municipality. When the rate is approved by the board of trustees, the rate is effective for the calendar year for which it was approved.

(c) If the balance in the supplemental death benefits fund is insufficient to pay the supplemental death benefits due, the board of trustees may direct that, to the extent available, an amount equal to the amount of the deficiency be transferred from the general reserves account of the endowment fund to the supplemental death benefits fund. The board may adjust future contributions to the supplemental death benefits fund to repay to the general reserves account the transferred amount.

(d) If the total number of members covered by the supplemental death benefits fund becomes fewer than 4,000, the board of trustees may order that the fund be discontinued and all coverage terminated. The termination date must be December 31 of a year designated by the board and may not be before the expiration of six months after the date on which the order of termination was adopted.

(e) To protect against adverse claim experience, the board of trustees may secure reinsurance from one or more stock insurance companies doing business in this state if

the board determines that reinsurance is necessary. The retirement system shall pay the premiums for reinsurance from the supplemental death benefits fund.

[Sections 855.503–855.600 [~~65.503–65.600~~] reserved for expansion]

#### SUBCHAPTER G. MISCELLANEOUS ADMINISTRATIVE PROCEDURES

Sec. 855.601 [~~65.601~~]. STATEMENT OF AMOUNT IN ACCOUNT. (a) As soon as possible after the end of each calendar year, the board of trustees shall send to the governing body of each municipality and to each requesting member an annual statement that contains:

- (1) a balance sheet showing the financial and actuarial condition of the retirement system on December 31 of that year;
- (2) a statement showing the receipts and disbursements made during the calendar year;
- (3) a statement showing changes in the asset, liability, reserve, and surplus accounts during the calendar year; and
- (4) additional statistics necessary for proper interpretation of the condition of the retirement system.

(b) The board of trustees shall furnish to a member, on written request, a statement of the amount credited to the member's individual account. During a calendar year, the board is not required to furnish to a member more than one statement requested under this subsection.

Sec. 855.602 [~~65.602~~]. INTEREST IN ASSETS. A particular person, group of persons, municipality, or other entity has no right in a specific security, item of cash, or other property of the retirement system other than an undivided interest in the assets of the retirement system.

Sec. 855.603 [~~65.603~~]. FORFEITURE OF CONTRIBUTIONS. (a) If an application under Section 852.103 [~~62.103 of this subtitle~~] for the accumulated contributions of a person who has ceased to be employed by a participating department for a reason other than death or retirement has not been made before the seventh anniversary of the person's last day of service, the retirement system shall return to the person or the person's estate all accumulated contributions of the person.

(b) If the person or the administrator of the person's estate cannot be found, the person's accumulated contributions are forfeited to the retirement system. The retirement system shall credit the amount forfeited to the perpetual endowment account of the endowment fund.

Sec. 855.604 [~~65.604~~]. MERGER. A pension system for municipal employees may merge into the retirement system under terms adopted by the board of trustees and the trustees of the other system after the other system has approved the merger by a majority vote.

Sec. 855.605 [~~65.605~~]. PARTICIPATION OF MEMBERS OF FIRE DEPARTMENT. (a) If the employees of the fire department of a municipality, with the consent of the municipality, elect to become members of the retirement system, the funds of the municipality's firemen's relief and retirement fund, if any, and future payments to the fund may be transferred to the board of trustees on the voluntary application of the municipality.

(b) A participating municipality shall pay to the board of trustees money that could have been paid annually to the firemen's relief and retirement fund if the fire department were not covered by the retirement system or another pension system or if the municipality had taken the proper steps to secure the money. The retirement system shall credit amounts paid under this subsection for the benefit of fire fighters as the board of trustees directs.

SECTION 2. (a) In Section 151.003, Civil Practice and Remedies Code, the reference to "Subtitle E, Title 110B, Revised Statutes" is changed to "Subtitle D or E, Title 8, Government Code."

(b) In Section 13.003, Education Code, the reference to "Subtitle D, Title 110B, Revised Statutes" is changed to "Subtitle C, Title 8, Government Code."

(c) In Subsection (e), Section 3.633, Family Code, the reference to "Section 12.001, Title 110B, Revised Statutes" is changed to "Section 802.001, Government Code."

(d) In the following laws, the reference to "Subtitle E, Title 110B, Revised Statutes" is changed to "Subtitle D or E of Title 8":

(1) Subsection (a), Section 74.054, Government Code;

(2) Subsection (a), Section 74.094, Government Code; and

(3) Subsection (b), Section 75.011, Government Code.

(e) In Subsection (a), Section 75.001, Government Code, the reference to "Subtitle E, Title 110B, Revised Statutes," is changed to "Subtitle D or E of Title 8."

(f) In Subsection (c), Section 75.112, Government Code, the reference to "Sections 52.201, 52.202, and 52.203, Title 110B, Revised Statutes" is changed to "Sections 842.201, 842.202, and 842.203."

(g) In Subsection (b), Section 75.113, Government Code, the reference to "Sections 55.403 and 55.404, Title 110B, Revised Statutes" is changed to "Sections 845.403 and 845.404."

(h) In Subsection (c), Section 304.009, Government Code, the reference to "Section 22.203(d), Title 110B, Revised Statutes," is changed to "Section 812.203(d)."

(i) In Subsection (c), Section 403.093, Government Code, the reference to "Section 35.404, Title 110B, Revised Statutes" is changed to "Section 825.404."

(j) In Section 155.021, Local Government Code, the reference to "Section 55.403, Title 110B, Revised Statutes" is changed to "Section 845.403, Government Code."

SECTION 3. This Act is enacted under Article III, Section 43, of the Texas Constitution. This is intended as a recodification only, and no substantive change in the law is intended by this Act.

SECTION 4. This Act takes effect September 1, 1989.

SECTION 5. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on April 20, 1989, by the following vote: Yeas 31, Nays 0; passed the House on May 4, 1989, by a non-record vote.

Approved May 25, 1989.

Effective Sept. 1, 1989.

## CHAPTER 180

### S.B. No. 1

#### AN ACT

relating to medical assistance claims or liens.

*Be it enacted by the Legislature of the State of Texas:*

SECTION 1. Section 32.0331, Human Resources Code, is repealed.

SECTION 2. The Texas Department of Human Services may not enforce a claim or lien established before the effective date of this Act under Section 32.0331, Human Resources Code.